



CHAPTER II

LITERATURE REVIEW

A large volume of literature is available on various human rights aspects related to child/youth (individual) development in civil, political, economic and social field. This literature review provides an overview but focuses specifically on the rights-based approach in relations to CRC and CEDAW acceded to by Myanmar.

2.1 The Universal Declaration of Human Rights

Human rights covenants emerged during the intensity of Cold War and hence the consensus over the unity of civil and political rights and economic, social, and cultural rights was broken in the 1950s. Two separate covenants, one covering civil and political rights and the other, covering economic, social, and cultural rights were adopted as international treaties in the late 1960s, and both came into force in the late 1970s. While the West and the US were proponents of civil and political rights, which is called first generation rights, economic, social, and cultural rights, which is called second generation rights, were backed by the Soviet Union and its socialist allies.

Donnelly (1989) argues that human rights are fundamental moral and legal entitlements that pertain to basic well-being and dignity. It is the “social” and “political” guarantees necessary to protect individuals from the standard threats to human dignity posed by the modern state and modern markets.

Therefore, as Beetham (1995) says, human rights should be applicable to all, regardless of the level of development of a country. All humans deserve equal respect, or merit treating with equal dignity, whatever the differences between them. Cranston (cited in Bouandea 1997, 25) asserts that the right should be genuinely universal as human rights are moral rights for everybody wherever they are.

However, while civil and political rights need only the will of governments, economic, social and cultural rights need material resources for their implementation. They have thus come to be known as ‘negative and positive’ rights respectively, Bouandea (1997) points out. Nevertheless, he asserts that it would be difficult to

judge which set of rights is of paramount importance. It depends on the country's way of thinking about human rights which will determine which rights it prioritizes. This will in turn impact its policies in significant ways.

In order for the people to fulfill these rights, Beetham gives an example pertinent to our study: "economic and social rights themselves cannot be guaranteed over time, if people are deprived of information about the effects of economic policies and have no influence over their formulation or implementation." (1995: 49) Hence, in order to realize economic rights people must acquire the necessary information. Similarly, in order for children to attain health rights, they must not be deprived of information that affect their lives and of its consequences.

2.2 The Right to Development

The Declaration on the Right to Development (DRD)¹ was adopted by the United Nations in 1986 by an overwhelmingly majority of the world's countries as a result of lobbying by developing countries. The Declaration came almost thirty-eight years after the adoption of the Universal Declaration of Human Rights, according to which human rights constituted both civil and political rights (Articles 1 to 21) and economic, social, and cultural rights (Articles 22 to 28). The first article of the DRD reads:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized (United Nations, 1990, 717).

The Vienna Declaration² of 1993 reaffirmed the right to development in the Declaration on the Right to Development. Its Article 10, it states that it is a universal and inalienable right and an integral part of fundamental rights. The declaration states that the human person is the central subject of development. Lasting progress towards the implementation of the right to development requires effective

¹ The Declaration on the Right to Development was adopted by the United Nations General Assembly, resolution 4/128 on December 4, 1986 (<http://www.unhchr.ch/html/menu3/b/74.htm>)

² The Vienna Declaration and Programme of Action emerged from the World Conference on Human Rights held in Vienna from 14-25 June 1993

development policies at the national level, as well as equitable economic relations and a favorable environment at the international level.

Article 18 of the Vienna Declaration states that: “for the human rights of women and of the girl-child Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated.” Article 21 states that: “national and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular, the girl-child, abandoned children, street children, economically and sexually exploited children. . . .” “The child for the full and harmonious development of his or her personality should grow up in a family environment which accordingly merits broader protection.”

Article 24 states that: “Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable. . . .” Therefore, “States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health, and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation in finding a solution to their own problems.”

Sengupta (2000) analyses that the human rights is a product of social contracts established between the government and the people. States were instituted to carry out the tasks of governance to fulfill these rights, in accordance with the social contract. He further stresses that the national constitutions codify the rules and procedures to protect, promote, and secure the rights of the individuals either separately or as members of groups or collectives, and national governments are expected to protect and uphold those constitutions.

Therefore, he continued, the right to development is viewed as a human right derived from an implicit social contract binding civil society that identified duty-holders both nationally and internationally, with the obligation to deliver this right. He adds that economic and social rights are associated with positive freedoms which the state has to secure and protect through positive action.

Nevertheless, Marks (2003) points out that there are three obstacles in the realization of the right to development. The first is a political one. Since the beginning, the concept of right to development has been controversial due to the problems of development and the dominance of East-West issues on the agenda of the Commission on Human Rights, marginalizing the concerns of the political South. The second is that of ignorance. There is a lack of empirical knowledge that relates to development and human rights theory and literature in the scholarly community through academic publications, deliberations of learned societies, and teaching in universities. The third obstacle results from the absence of policies at the national and international levels that go beyond lip service to the concept and that set priorities and allocate resources based on the right to development.

Therefore, he concludes that the future of Right to Development will depend on the extent to which these political, intellectual and practical obstacles are addressed. Governments need specific programs and mechanisms to assist governments in meeting their reciprocal obligations in this area. In addition, the intellectual obstacles should be met to enhance the political debate and find meaningful approaches to this right in the practice of development are incorporated in national and international policy.

In response to these observations the rights-based approach to development was formulated as a way to make the right to development a reality.

2.3 Rights-based Approach to Development

In March 1995, the World Summit for Social Development in Copenhagen³ agreed upon the Copenhagen Declaration on Social Development and the Programme of Action. This comprehensive development document outlines the rights-based approach to development, designed to be people-centred, particularly in the area of gender equality and the empowerment of women, the aged, youths and the prevention of HIV/AIDS, as it promotes popular participation in development, equality and non-discrimination.(ESCAP:2003)

³ At the World Summit for Social Development - held 6-12 March 1995 in Copenhagen, Denmark, Governments adopted Copenhagen Declaration and Programme of Action which represent a new consensus on the need to put people at the centre of development.

Theis (2004) explains that the essential component of a rights-based approach is the empowerment and mobilization of people to demand their own freedoms and entitlements. The rights-based approach came up as a response to the fact that needs-based approach has failed to significantly reduce poverty and to tackle the fundamental causes of exploitation, abuse and poverty. Therefore, the rights-based approach focuses on those groups of people most excluded in society.

Ljungman (2004) compares the differences between needs-based approach and rights-based approach. While needs-based approach works toward outcome goals, rights-based approach works towards outcome and process goals. Needs approach recognizes needs as valid claims while rights approach recognizes that rights always implies obligations of the state. In needs approach, empowerment is not necessary to meet all needs while rights approach recognizes that rights can only be realized with empowerment. While needs approach accepts charity as the driving motivation for meeting needs, rights approach regards charity as an insufficient motivation for meeting needs. Needs approach focuses on manifestations of problems and immediate causes of problems while rights approach focuses on structural causes of problems, as well as manifestations and immediate causes of problems. While needs approach focuses on the social context with little emphasis on policy, rights approach focuses on social, economic, cultural, civil and political context and is policy-oriented.

OHCHR (1996-2002) considers that rights-based approach to development includes: 1) express linkage to rights; 2) accountability; 3) empowerment; 4) participation; and 5) non-discrimination and attention to vulnerable groups. Accountability refers to young people assuming greater role and responsibility for their development; empowerment to an increase in their self-esteem and self-confidence so that they possess the ability to resist peer pressure; participation to that in decision-making in matters that affect their lives; and non-discrimination and attention are to be given to youths who are in the category of vulnerable groups. This means that in order to realize the rights of each individual, there has to be internationally guaranteed rights, accountability both by the claim-holders and duty-holders, empowerment in capacities, and access to means to change their own lives, to improve their own

communities and to influence their own destinies, through active participation in the development process.

Ensuring substantive rights involves both institutions which are able to respond to rights claims, and citizens and social organizations that engage with these institutions to shape the meaning of rights and how they are promoted in practice such that the potential for change that benefits poor and marginalized groups are realized (Wheeler, Petit, 2005). This means the individual themselves, communities, governments, social organizations and international organizations alike will have to be involved.

Rights-based approach sees people as citizens. A citizen connotes someone with rights rather than someone receiving welfare or buying services. People become agents and subjects, rather than objects, of their own development. It is not for agencies to decide whether and by how much people should participate in the decisions that affect their lives. (IDS: May 2003)

The Convention on the Rights of the Child states explicitly as to what rights young people should have in order that they can develop to their full potential.

2.4 Convention on the Rights of the Child

The Convention on the Rights of the Child⁴ (CRC) is another UN document relevant to our present concern. While all human rights conventions apply to all regardless of age, children need a separate convention for additional attention and protection due to their vulnerability. CRC, which Myanmar has acceded to, is a legally binding document that has been ratified by 191 countries. Ratification means an obligation to carry out the duties in regard to children as stated in its articles. The CRC incorporates the whole spectrum of human rights and sets out the specific ways to make them available to boys and girls. It applies to all children and young people under the age of 18.

Article 3 of the CRC, states that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 5 further states that it is the responsibility of parents and the wider family to provide guidance appropriate to the

⁴ The Convention on the Rights of the Child was unanimously adopted by the UN General Assembly on 20 November 1989

child's evolving capacities, while Article 6 states that the child has an inherent right to life. Article 12 states that it is the Child's right to express an opinion, and to have opinion taken into account, in any matter or procedure affecting them.

While Article 13 states that the child has freedom of expression in that it is the child's right to obtain and make known information, and to express his or her views, unless this would violate the rights of others, Article 17 states that the role of the media in disseminating information to children that is consistent with moral well-being and knowledge and understanding among people, and respects the child's cultural background. Article 24.1 (e) states to ensure all segments of society, in particular parents and children, are to be informed, have access to education and are supported in the use of, basic knowledge of child health, and Article 24.4 states the need for international cooperation to ensure this right.

On the subject of the right to health, Article 12 of the ESCR states that people must have access to medical care and treatment. In the case of people with HIV/AIDS, if no proper treatment and medical care is given, they will die and leave more children orphaned. This in turn has a whole range of impacts on children's survival and development. Therefore, they have to have their right of access to education and information, in order to protect themselves against HIV/AIDS. (Theis: 2004)

At the Fourth Session of the World Youth Forum of the United Nations System held in Dakar in 2001, one of the most important developments was the adoption of a special annex on HIV/AIDS, which indicated the commitment and dedication of the world's youth to tackling this major health challenge. One of the Forum's recommendations for youths is the increased access to formal and informal educational programmes on HIV/AIDS, substance abuse, sexual and reproductive health, and mental health. It called on Governments to ensure access by young people to health information, health services, and sexual and reproductive health services.

The UN Economic and Social Commission for Asia and Pacific in its fifty-ninth session held in Bangkok in 2003 calls on Governments and UN agencies to implement their policies and programmes incorporating rights-based approach, particularly in the empowerment of youth and prevention of HIV/AIDS, among others, for most vulnerable and disadvantaged groups in society. It called for

particular emphasis on meeting the reproductive health needs of underserved population groups taking into account the rights and responsibilities of parents and the needs of adolescents and the rural and urban poor. (ESCAP: 2003)

Joachim Theis (2004) said that there are links between youth (children)'s participation and their rights to survival, development and protection. In order to survive, they must have access to information about sexuality, drug use and HIV/AIDS.

Information about HIV/AIDS gives youth's access to the knowledge in order to protect them from HIV infection. Hence access to information, freedom of expression and involvement in decision-making are related in various ways to youth's right to development. Youths who are able to express themselves and are involved in decisions develop their abilities to take greater roles in society.

UNAIDS, UNICEF and WHO (2002) recommended 10 steps for the way forward in the prevention of HIV/AIDS infection for young people. Some of these are: 1) to provide young people with knowledge and information, such as increasing knowledge through schools, increasing knowledge through communities, and increasing knowledge through the media; 2) to equip young people with life skills to put knowledge into practice; 3) to work with young people and promote their participation such as peer education; 4) to create safe and supportive environments; and 5) to create safe and supportive environments; and 6) to reach out to young people most at risk.

Young People themselves have also expressed their concern with regard to their right to HIV prevention. A Preliminary Report Findings from Country Consultations held with Young People on meeting their rights to HIV prevention and care in order for all to access recommended: 1) access to information, knowledge and life skills; 2) access to services, testing and treatment; and 3) creating a safe and supportive environment. (UNICEF: 2004).

One group most at risk is young people who are migrant workers from Myanmar to Thailand. Chantavanich (2000) found that there was a complex of the risk situations among mobile people from rural areas of Myanmar that make them vulnerable to HIV/AIDS and called for an understanding of particular situations. Being away from their family and community where social and sexual norms are prescribed and

followed to varying degrees, they must adapt to new situations. In their new settings, they may have more freedom, new experiences and opportunities, and increased peer pressure, which influence their thinking and behaviour.

Another related UN Convention is pertinent in the case of female youths. It is CEDAW.

2.5 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵ expresses concern that discrimination against women continues to exist, especially in poverty situations. Inasmuch as national development, international welfare and the cause of peace require the maximum participation of men and women equally in all fields, the contribution of women to family welfare and the development of society need to be more fully recognized, with a change in the traditional roles of men and women to achieve full equality.

While Article 6 of CEDAW advocates the suppression of trafficking in women and of their exploitation as prostitutes, Article 10(f) states that appropriate measures are to be taken to eliminate discrimination against women, to reduce female school drop-out rates and the organization of programmes for girls and women who have left school prematurely. In addition, Article 12 states that there should be elimination of discrimination against women in health care by ensuring equal access to health services. All these are relevant to our study.

As can be seen, many rights philosophers have asserted that rights give individuals a minimum condition of dignified life and a life worthy of a human being. In order to realize these rights, rights holders themselves (children), duty bearers (governments), communities (society) and those in the development field must be involved. Under the not-so-favourable economic and social conditions in Myanmar where economic and social rights cannot be fully realized, how can youths realize their right for their development? There is need to further explore whether the life-skills training

⁵ Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the UN General Assembly resolution 34/180 on 18 December 1979 and entered into force on 3 September 1981, in accordance with article 27(1)

programme conducted through right-based approach to youth development in the prevention of HIV/AIDS will give them empowerment and accountability and participation in order to realize their full potential and development.

Attention now turns last to the life skills training programmes.

2.6 Life Skills Training

A life skills training programme in Myanmar targeting youths aged 15–25 years for HIV/AIDS prevention, carried out by the three collaborating partners UNICEF/Myanmar, the Myanmar Maternal and Child Welfare Association, and the Myanmar Red Cross Society, was evaluated in 2000. It was found that there was positive impact of life-skills training and improved knowledge and attitudes towards people living with HIV/AIDS. Nevertheless, there was limited impact of friend-to-friend counseling, limited impact of friend-to-friend counseling and gaps in knowledge on reproductive health, continued stigmatisation of condom use, and low perception of personal risk. (Population Council/UNICEF: 2000).

The assessment of SHAPE project in Myanmar done in 2002 found that it is well liked and appreciated by those involved. SHAPE has contributed to knowledge gain, and positive change in both attitudes and behavior with regard to prevention of HIV/AIDS, sexually transmitted disease, smoking, and drug abuse both among students and in the community. Improvement also has been observed by the respondents in nutrition, health and hygiene, decision making and social skills among students. To some extent it has contributed to change in sanitation, health and nutrition practices in communities. It was also recommended to extend SHAPE curriculum with some modification (SHAPE Plus) to out-of-school children and youths. (Benard: 2002)

Therefore, as stated above, since participatory development acquired a new momentum over the past ten years, a significant body of reported evidence has emerged from young people themselves, as well as parents, NGOs, INGOs, UNICEF and others as to the positive outcomes that have been achieved. (Lansdown: 2004). Young people consistently cite the acquisition of skills, enhanced self-esteem, self-confidence, a sense of efficacy and greater awareness of their rights. Parents observe

improved capacities in their children and the positive benefits to local communities. Nevertheless, Lansdown opined that there is still widespread recognition of the pressing need for better evidence on impact and outcomes.

The present study thus attempts to fill the gap in knowledge by focusing on 10-18 years old youths in Myanmar who have undergone out-of-school life skills training with particular emphasis on HIV/AIDS prevention and their empowerment thereof at sites on which no study had been done.

