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Children's Rights as Living Rights

The Case of Street Children and a new Law in Yogyakarta, Indonesia

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Abstract

In this article we propose the notion of living rights to highlight that children, whilst making use of notions of rights, shape what these rights are, and become, in the social world. Emphasising children's agency in living with and through their rights facilitates empirical enquiry, and moves the vectors of the debate on what children's rights are to the interplay between how children understand their rights and the way others translate and make use of rights claims on children's behalf. The argument builds upon a case study in Yogyakarta, Indonesia, where street children, claiming the right to safely live and work on the streets, were involved in a successful campaign against an anti-vagrancy draft law. However, the subsequent new legislation – although in line with international children's rights standards – ignored their claims and offers little for those street children who do not want to be “rescued”.

Keywords

living rights – children's rights – street children – social movements – translations

Introduction

In late 2006 the Provincial Department of Social Affairs of Yogyakarta, Indonesia, launched a draft law (hereafter the draft *or* the draft law) prohibiting the presence and activities of vagrants, beggars and, in the words of the Department, ‘children who have troubles on the street’. Despite the adoption of similar laws in several other provinces in the country, the draft sparked intense controversy when, as stipulated by Indonesian law, the provincial government gave representatives of civil society the opportunity to react to the draft. In our case it was presented to a young man named Gama, a human rights activist and staff member of a local NGO. Gama spread the draft among other local NGOs, most of which had once been part of a no longer active NGO network for street children. He also spread information about the draft among the different street communities with which his NGO worked. This turned out to be crucial.

The local NGOs voiced their concern that the draft would have no other goal – in their view – than legalise the recurrent *razzias* (police raids) against the homeless. They found particularly worrying that by banning them from begging and working on the streets, the draft would criminalise both adults and children. To provide the police crack-downs additional legal backing, the draft also made it an offence to give the children money or other handouts. In the eyes of the NGOs this was unacceptable. But what really made a difference was the reaction of the street communities whom Gama had informed about the draft’s contents. When they understood that it would make their life even more difficult – if not impossible – numbers of adults and children took together to the streets. Protests culminated in a demonstration in which hundreds of homeless people marched through the city centre to the Provincial Parliament. Street children with painted faces and torsos led the march to the rhythm of traditional Javanese *gamelan* music, chanting:

Reject, reject, reject the draft!

Fight, fight, fight!

Those who reject this draft must say it out loud, REJECT!

Let us pass these streets, hands off our streets!¹

Some children held signs using offensive language:

1 Translations of the chants and signs: Edward van Daalen and Hanna Marinda.

The draft is hell!
The draft is bullshit!
Piece of shit regulation!

Other signs communicated how they perceived their right to live in the city:

Stop the violence to street people!
The street is our house!
Let us live here!
This is our country; it is our right to be here!

Vocal protests such as these, in which street children mobilise to protest against laws they feel unjustly violate their right to a livelihood, are relatively rare. But even if rare, it is during these outbursts that street children reveal how they conceive of their rights. When solidifying into conflicts that catch the public eye, these conceptions may resonate with the agendas of policy makers, human rights activists and NGOs using the language of human rights to champion what they see as children's inalienable entitlements. Conflicts of interpretation may then temporarily mobilise an array of spokespersons who agree on the injustice of particular laws such as the draft under discussion. But, as we shall see, the street children's perception of rights do not necessarily coincide with those of the spokesperson who acts on their behalf. How these different perceptions can be brought together depends on the interpretation of the various parties involved, and may therefore trigger ulterior dissent. In this article we argue that understanding the dynamic of these disagreements has much to gain from recognising children's own perceptions of their rights and propose the notion of living rights to capture this dynamic.

Representatives of national governments, UN agencies and NGOs took more than ten years to come to an agreement about the contents of the Convention on the Rights of the Child (hereafter CRC) which was finally adopted in 1989 (Cantwell, 2007; Detrick *et al.*, 1992; OHCHR, 2007). Since then, the recognition that children are holders of rights has been gaining coinage amongst both practitioners and academics. But debates about agency, participation rights and cultural difference have remained particularly intense (Reynaert *et al.*, 2009; James, 2009; Esser *et al.*, 2015; Corradi and Desmet, 2015; Tisdall, 2015). Difficulties arise, for instance, in the case of armed conflicts, in which children's active participation is considered almost exclusively as detrimental (Hanson, 2011).

The problem with fully granting agency to children in situations such as these can be ascribed, following Merry (2009), to the still widespread paternalistic

approaches to human rights protection that is merely concerned with the passive victims of human rights violations. Hanson and Nieuwenhuys (2013) claim that the prevalence of these approaches feed the impression amongst both scholars and policy-makers that children's rights are those defined in the CRC and that they should primarily be preoccupied with issues of implementation. Working from the idea that law always represents an unstable translation of ideas of right and wrong that exist in the real world and are based on lived experiences, they maintain that children's rights are not merely the product of philosophical, political and legal deliberations but already exist in practice before they are translated into legal principles. They highlight the fact that children, and people in general, whilst putting notions of rights into practice, help shaping what these rights are and become in the social world. Challenging the idea that children's rights are exclusively those defined by international institutions or states, they propose the notion of living rights to create a critical distance from the legal and political fields where children's rights are invoked. This facilitates empirical investigations of how competing understandings of children's rights – including those of children – influence the social world and can elevate social practice (Hanson and Nieuwenhuys, 2013: 6).

Here we develop these contentions using an extended case-study of a socio-legal controversy which started in 2006 with the draft law mentioned at the beginning of the article, and ended roughly six years later with the adoption of an entirely different law on street children. We begin with brushing the context in which homeless people – including children – make a living on the streets of Yogyakarta. We then detail how the controversy evolved and focus in particular on how certain interpretations of children's rights took centre stage at the expense, in particular, of those of children (section 1). In section 2 we ask ourselves how to theorise children's perceptions of their rights. The plural, legalist notion of living law allows us to uncover the existence of a plurality of legal frameworks. We come to the conclusion that street children's perceptions of their rights cannot be comprised under the notion of "law". Social movements' use of rights with a view of changing the balance of power in favour of the disadvantaged, theorised as "human rights from below", holds some important clues but fails to acknowledge fully street children's own rights perceptions. We propose the notion of living rights to bring the interplay between children's conceptions and how other players strategically make use of rights claims on children's behalf into focus (section 3). Children's own rights perceptions can match claims made on their behalf, but this is not necessarily always the case. The relative similarity or distance between the two should be open to empirical investigation.

Edward van Daalen has reconstructed the legal controversy using data collected during a three-month stay in Yogyakarta between February and May

2012. The primary data includes 25 semi-structured interviews and four focus group discussions (FGDs) with a range of adults who, between 2006–2012, fulfilled key roles in the controversy. Secondary data includes legal documents, government, university and NGO reports, administrative records (such as minutes and attendants lists of public discussions and workshops) and video material. The six years that elapsed between the street protests and the adoption of the new law – added to their high mobility – made it impossible, in spite of several attempts, to trace street children who had been active in the initial protests. The interviewees and FGDs participants were all informed about the nature of the research and all were invited to a presentation organised at the end of the fieldwork period in which the researcher presented his reconstruction of the controversy and shared some preliminary conclusions. The discussion that followed the presentation provided further data. The fieldwork would not have been possible without the support of the staff at child rights NGO *Yayasan SAMIN* and Mas Bagus, at the time a political science student and children's rights activist who was the interpreter during the interviews and discussions in Indonesian and Javanese.

1 The Yogyakarta Controversy on Street Children's Rights

Before detailing how the controversy about the draft law evolved, we begin with a brief introduction of the broader political and legal context in which street children eke out a livelihood in contemporary Indonesia.

Indonesia's brand of legal pluralism dates back to centuries of Dutch colonial rule and a short period of Japanese occupation. Newly independent Indonesia's adoption of a Constitution in 1945 added to the complexity of a legal system that also recognised local customs, *adat* law (traditional customary law), *syariah* law (Islamic law) and incomplete transformations of Dutch colonial laws. Authoritarian decrees under Sukarno and – later – Suharto's military dictatorship, further complicated the picture. The onset of the economic crisis and widespread protests led in 1998 to President Suharto's resignation. This opened the way for a democratisation process under President Habibie, known as the *reformasi*. Under pressure of the International Monetary Fund (IMF) and other donors, Habibie's government passed 67 new laws in only two years (Lindsey, 2008: 12). One of these allowed regional governments to establish their own rules in matters that were yet to be regulated centrally. As a result, individual regions began to establish rules that ran counter to decisions prepared by other administrative levels, leading to a situation akin to De Sousa Santos' notion of "internal pluralism" (McCarthy, 2004: 1205). According to De Sousa Santos, the situation arises when state institutions, working practically

autonomously from each other, engender different regulatory logics (1992: 134). New opportunities arose for Indonesian civil society groups to participate in establishing rights and setting up institutions and mechanisms of accountability. The existing NGOs and grassroots movements had in consequence substantially to rethink their strategies (see Antlov *et al.*, 2006). This is the confusing situation which NGOs working with Yogyakarta's street children had to deal with at the beginning of the controversy over the draft law targeting beggars, vagrants and street children.

On the subject of children's rights, the Indonesian Constitution states that 'every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination' and that 'the State shall take care of abandoned children.'² The country has furthermore ratified the CRC and the two optional protocols, bringing it formally in line with international children's rights standards. In 2002, a national Law on Child Protection was adopted. The law incorporates the basic principles of the CRC – including the non-discrimination, best interests and participation provisions – and provides a comprehensive legal framework for children's protection. Even so, the situation of the thousands of street children in Indonesia has always been one that contrasts sharply with the content of these documents. As we will see for Yogyakarta, street children are exposed to many forms of repression and marginalisation and are unable to access many of the rights that national laws and the CRC recognises.

Yogyakarta is a city that treasures high Javanese culture and traditions of tranquillity and moderation (Mas'oeed *et al.*, 2001: 120). The city's rich artistic history and several landmarks of ancient Javanese civilisation, make it a "must-see" place for hundreds of thousands of tourists every year. The city also houses some of the nation's most prestigious universities and is known for its strong and vibrant civil society. From the 1930s onwards a large number of non-profit organisations, devoted to relief for marginalised groups, have opened offices in the city (see White, 2004). Ever since the 1970s, numbers of street children from all over Java have come to Yogyakarta. Despite the city's enlightened traditions, its street children have always been exposed to severe risks and violence. Besides the threat of various forms of abuse and exploitation inherent to a life on the streets, the children have also had to face regular police crackdowns known locally as *razzias*. During the *razzias* a special police force called *Satpoll PP* comes down on street children and adults, arresting them and often confiscating or destroying their belongings. When arrested, the children are brought to temporary shelters or simply dropped outside of the region's

2 Constitution of Indonesia, articles 28B and 34(1).

borders. Furthermore, the near impossibility for the children to secure an identity card – *Karta Tanda Penduduk* (KTP), a crucial document to enrol in school, receive healthcare and access many other state services – pushes them to a life on the margins of society (see Solvang, 2013; Beazley, 2000).

Until the Asian financial crisis hit Indonesia in 1997, street children were involved in local cultural and social movements, actively contributing to the city's rich artistic life. During the crisis the numbers of street children increased dramatically. Making a living, or simply surviving, dispelled former idealistic and artistic preoccupations and became the primary reason for living and performing on the streets (Richter, 2012: 2). Today, street children can be found throughout the city but are most conspicuously visible shining shoes, selling newspapers or "busking" (as singing and playing the guitar is called) in and around the main shopping areas and tourists' places, on busy crossroads and in the city's busses. The past commitment of the street communities to the city's cultural life being still held in high esteem, street boys take great pride in busking and consider it a highly desirable activity (Beazley, 2003).

We now move to the 2006 protests against the draft law that brought the issue of street children's rights to public attention. Even though the draft's preamble mentioned the CRC and the national Law on Child Protection, its language disturbingly revealed authoritarian views on street children as out-of-place youngsters that dated back to the Suharto period or even colonial times. One of the interviewees used the term "legal shopping" to point out that, in an attempt legally to justify the criminalisation and penalisation of beggars, vagrants and street children, the draft relied heavily on a selection of controversial laws – including sections of the 1881 Dutch Criminal Code, introduced in Indonesia in 1918.³ One local senior child rights activist argued that as no one can be held criminally responsible for not having a home, the local authorities would have brought into play their capacity to penalise the homeless for disturbing public order.

As already stated, in a bid to fulfil its legal duties, the provincial government invited Gama, a local NGO worker, to comment on the draft. After spreading copies among other local NGOs and the street communities, Gama set to organise the latter into a protest movement. In the following two years he would organise a total of 23 protest actions aimed at raising public awareness about the predicaments of the street community and the draft's violation of their rights. The actions ranged from local radio and TV interviews and public discussions

3 The code is considered outdated and no longer compatible with the current human rights catalogue and the values that prevail in society; a thorough revision has been announced in 2013 (see Renggong, 2014).

and workshops, to street protests in which the street children played an important role. The first protest march occurred only days after the draft was first presented to Gama. The second demonstration, in which street children gave a concert, was held a few months later on one of the busiest squares of the city. But it was the third protest, organised to 'shock and confront the established order' – which we described in the introduction of the article – that gained most media attention and led to tangible results.

The hundreds of people marching to the Provincial Parliament called themselves *Gerakan Kaum Jalanan Merdeka* (the independent street movement). A large white banner bore the seven principal demands of the street movement,⁴ the first one being, of course, the withdrawal of the draft. In preparation of the protest the street children were left free to express their feelings about the draft. This produced a series of signs bearing Javanese swear words but also signs demanding the right to safely live and work on the city's streets. From where did the children take this language of rights? As the movement made no distinction between adults and children, it tacitly endorsed children's claim that their right to live and work safely on the streets should, just as adults', be respected. Possibly they had also heard about human rights through the media and NGO projects and embraced this language to counter the insecure situation in which they found themselves and generate, what Liebel (2004: 31) aptly terms, 'their own answers'. But the children's language of rights lasted only as long as they marched in protest holding their signs. It quickly evaporated when the march reached the Parliament and 20 children accompanied Gama and several other adult spokespersons inside – quite literally stepping into the legal arena – to discuss their demands with two parliamentarians who welcomed them. Whilst Gama and the spokespersons engaged in a debate around their demands, the children seemed bored and uncomfortable, some awkwardly fiddling with their guitars and protest signs, and others smoking. Is this because the rights they proclaimed during the protests got lost in translation during the adults' negotiations with the parliamentarians? We return to the issue in section 2. Nevertheless, the protests and the admission of street children into the Parliament resulted in the unique situation that Members of Parliament decided to withhold support for the draft until the Department of

4 (1) Reject the draft. (2) The government must meet its obligation to ensure decent jobs and livelihoods for communities. (3) Stop the razzias against the street community. (4) Refrain from all other forms of violence on the streets. (5) Revoke regulations which violate the rights of the urban poor. (6) Revoke similar local regulations in all other provinces throughout Indonesia. (7) Provide the street community with identity cards. Translation: Edward van Daalen and Hanna Marinda.

Social Affairs (hereafter the Department) and civil society would come to an agreement about its content.

During the protests a rift emerged between Gama and other local NGOs, who felt suspicious about his double role as leader of the street community and NGO staff member. The NGOs believed that negotiations with the Department could result in the draft being so far amended that street children could be kept off the streets without coercion. Gama remained of the opinion that the draft represented a dangerous assault on street people's freedom and safety – including children's – and could therefore not be negotiated. In support of his position he organised a survey among the children belonging to the three largest street communities on their experiences with *razzias*.

Whilst Gama refused to attend meetings organised by the Department or by the other NGO's as long as the draft was on the table, he continued to organise public discussions and workshops together with the recently installed regional *ombudsman*, mainly to discuss whether a new law was needed at all. This could not prevent tensions between the NGOs, the street movement and the Department from mounting, the more so the latter was also internally divided about how to proceed. A situation known locally as "the deadlock" – that lasted almost two years and failed to lead to action – ensued. This was to change in 2010, when after several years of working elsewhere in the region, Save the Children USA (hereafter Save) reopened an office in Yogyakarta to prepare its new programme on street girls.

Learning about the draft controversy, Save's staff requested the Department to be allowed to find a solution to the deadlock. As several high officials were also seeking to convince the Department to revoke the draft and to begin with a clean sheet, the Department put Save in charge of bringing together a team to draft a new law exclusively aimed at street children. Its members would consist of several NGO representatives, social welfare officials, police officers responsible for the *razzias*, the directors of two shelters for street children, a legal expert of the Department of Justice and Human Rights, and, last but not least, Gama as representative of the street movement.

The news that the draft was not only repealed but that he was invited to join a new drafting team, came as a surprise to Gama and left him bewildered. Accepting the invitation implied accepting to split the interests of the street community into those of adults and children. What would happen with the demands of adults, if he accepted? Gama feared that a repeal of the draft was no guarantee that adult street people would be protected against the *razzias*. He nevertheless decided to join the team to forward children's claims but on the condition that he would walk away the moment any member of the team would propose repressive measures.

On invitation of the national Ministry of Social Affairs, a delegation of the Yogyakarta drafting team travelled to the capital city Jakarta to present their plans. The Minister applauded the initiative and stressed that the new law's primary points of reference should be the CRC and the national Law on Child Protection. To get the law through the Provincial Parliament in time, the team set itself the task of finishing the draft within only three months. Gama was now faced with the task of translating the critical demands of the street movement into a language of international children's rights to a fast working and, thanks to Save's lobbying in the previous months, like-minded team. He did try to reach out to the street communities in between drafting sessions, but found little resonance, the movement having lost much of its momentum once the previous draft's immediate threat had faded away. An irresolute Gama also found little or no support for street children's claims among the other team members.

The Provincial Parliament passed, as expected, the new law on the Protection of Children Living on the Street⁵ without much discussion. The law is in line with both the CRC and national child protection laws. All parties involved applauded the law abandoning repressive measures in favour of recognising children's right to protection. Portraying the street communities as particularly pernicious places for children to grow up in, article 3 betrays nevertheless the gap separating the team's perspective on the rights of street children and those of the street children active in the protest against the initial draft.⁶ The only way to achieve protection would be to take the children out of their communities and off the streets and restore them to their families or, if failing these, admit them into NGO projects. Working from the idea that the children must be rescued from street life, the law significantly includes an article that prohibits the public from donating money or goods to street children, even if doing so is not penalised.

At the time of the fieldwork nine months had passed since the new law was adopted. Awaiting the drafting of a formal decree providing the guidelines to its implementation and shaping the institutions responsible for protecting

5 The Regulation of the Province of Special Region - Number 6, Year 2011 - On Protection of Children Living on the Street.

6 *Article 3*: The protection of children living on the street aims to: a. Remove children from street life; b. Ensure the fulfillment of child's rights to live, grow, develop and participate optimally in accordance with human dignity and values, and; c. Provide protection against discrimination, exploitation and violence, for the realization of qualified, noble, and prosperous children.

street children, it had not yet come into force. Many of those involved in drafting the regulation were also busy drafting the implementation guidelines. Whilst in the meeting rooms of the Department, long discussions were held about definitions of legal concepts and the different road maps leading back to a "normal life", in the public space, street children were as visible as ever, practising their rights to work and live on the streets and help their families or communities. In stark contrast with most of the drafting team member's beliefs, in this language of action (see Hawkins, 1986) the children clearly expressed views and behaved in ways that were evidently in line with their own understandings of their rights.

In sum, the street movement has played an important role in getting a repressive draft law that reflected authoritarian ideas about beggars, vagrants and street children as a scourge to society, repealed. During the protests, street children voiced alongside adults their anger and frustration against the draft and demanded that their right to safely live and work on the streets be recognised. After the first draft was revoked, the street children were typically not consulted when a new law aimed at their protection was drafted, nor did the NGOs or Gama represent them properly in the drafting team. The team members failed to envisage that those they saw as in need of rescue could have ideas about their rights worthy of consideration. Those who posed as champions of children's rights and spoke in the name of street children seemed to remain unaware of the discrepancy between children's interpretation of their rights and their own. What conceptual frameworks do we have at our disposal to observe and analyse the kind of dynamic underlying discrepancies in children's rights interpretations as those at work in Yogyakarta?

2 Positioning Living Rights

To capture the dynamic underlying discrepancies in the interpretation of children's rights, in this section we engage first with the notion of living law and second, the "children's rights from below" approach. We contend that legal pluralism works with the central notion of living law, whilst "children's rights from below" turns the analysis as it were on its head. Together they are instrumental in buttressing our argument about the importance of the notion of living rights.

The notion of living law thoughtfully captures the idea that law is not something static over which everyone agrees, but is continually changing or "living". The notion has long enjoyed much popularity among anthropologists and sociologists working from a legal pluralist perspective (Hertogh, 2009). The

mainstay of legal pluralism is that society is filled with multiple legal orders, including those sanctioned by custom and religious institutions that regulate behaviour and set normative standards by which people from different walks of life abide. The notion of law should therefore not be limited, as happens in dominant legal theory, to the body of state-sanctioned juridical and codified rules (Tamanaha, 2011: 298). To designate non-state legal orders, legal pluralists use the notion living law. Though not uncontested, we find the notion of particular interest to understand the interaction between human rights principles and the diversity of customary non-state legal systems typically inherited from colonial administrations in the developing world.

This interaction has been at the heart of anthropologists' concern with children's rights. To take but one example, Henderson (2013) cites the case of AIDS-orphaned girls in South Africa who, in order to find shelter and security in a new family, submit to customary marriage practices that clash with state-sanctioned minimum age at marriage. Several other anthropologists have questioned the relevance of the language of rights for marginalised children such as working children, child domestics and street children (Nieuwenhuys, 1998; Burr, 2002, 2006; Jacquemin, 2006; Valentin and Meinert, 2009; Balagopalan, 2013). Some have suggested that living law is antithetical to the very notion of individual rights that would be the pillar of human rights legislation (Droz, 2013). But not all legal pluralists see state law and living law as antithetical. For authors such as Ndulo (2011), the notion of living law helps, for instance, uncover how judges creatively apply the heterogeneous assemblage of laws typical of African legal systems to recognise and protect the claims of those, such as women and children, whom both colonial and customary laws worked in tandem to ignore. Ndulo contends in this respect that '...customary law is living law and cannot therefore be static. It must be interpreted to take account of the lived experiences of the people it serves' (2011: 87; see also von Benda-Beckmann and von Benda-Beckmann, 2009).

Ndulo's contention is remindful of Tamanaha's (2011) critique that living law is not law except in specific circumstances such as those obtaining in some parts of the colonial and post-colonial world. The norms and practices that are designated by the term living law do not in general constitute law in the sense that they can be enforced through a juridical apparatus similar to that of the state. As is the case with street children, marginalised children's lives may even unfold in contravention with state law. It would be misleading, so runs his argument, to attribute to the norms and practices guiding these lives a consistency and stability that would be similar to a state's legal system. In so doing anthropologists have introduced a binary in the analysis and failed to

understand the dynamic nature of law-making, says Tamanaha. This is why he feels that the notion of living law could more fruitfully help underscore that society thoroughly infuses law, 'the two inextricably intertwined, both always in motion' (Tamanaha, 2011: 298).

An optimistic view of law that is alive and responsive to the needs of oppressed people resonates in what Inksater (2010: 109) describes as 'critical postmodern legal pluralism' (see also De Sousa Santos, 1995, 2002; Kleinhans and Macdonald, 1997). Challenging hegemonic legal discourse, the theoretical model focuses on how subjects of law construct meaning. The model advances a number of important methodological propositions. First, subjects of law are the final legal authority and actively influence law. Second, legal subjects possess multiple identities and therefore perceive multiple legal orders. Third, legal subjects have the ability to construct law, or to transform what they believe is law (Kleinhans and Macdonald, 1997: 40–46). However, there are limits to what oppressed legal subjects can achieve. In his discussion of the relevance of the notion of living law, Messner may be right to claim that in spite of the promise the term "living" may hold, law's success is based on:

... the methodical cutting off of certain claims and certain horizons of meaning. And it is precisely here that we find what primarily seems to compromise the legal order from the perspective of moral or political responsibility: it cannot respond at all. Expectations, pretensions, claims stemming from 'outside' have always already become a 'case' when recognised by law.

MESSNER, 2012: 539

This remark may help illuminate Yogyakarta children's discomfort during the debates between the adult representatives of the street movement and the Parliamentarians in our example above. The case being debated was about the prohibition of their activities, not about recognising their right to perform them. The complex catalogue of laws at work in Yogyakarta did not offer them the possibility to forward such a claim. The children's fiddling with their guitars and protest signs can therefore be seen as the only possibility they had to express, through their behaviour, their attachment to the artistic aspects of street life. This brings us back to Tamanaha's critique that, in order to defend the position that norms and practices are law, legal pluralists tend to treat them as fixed, homogenous and uncontested. For Webber this minimises the role of disagreement and the dynamics it sets in motion and fails to recognise that law is made and remade through the agency of social actors (2009: 217).

This contention is particularly relevant for the radical others that children living on the streets represent, their ideas about their rights being only in part comprised under the notion of “law”. When laws disregard the complex relationships that make it possible to survive on the streets, the exclusion may even, as we have seen in the above case, put their livelihoods at risk. But this does not, evidently, mean that they surrender without resistance to laws that ignore their needs and inclinations and treats their presence as a public nuisance. How can this resistance be theorised?

A change of perspective, that takes the subject's position in his or her engagement with the law, brings into focus the notion of rights. Recognising people as subjects of rights changes the focus from existing laws to real-life people enabled to forward claims and negotiate social assumptions and constraints. This approach to human rights is born from a concern with the use of rights in emancipatory practices and seeks to defend the idea, to quote Kurasawa, that ‘human rights offer a potent moral grammar and set of ethical horizons through which to produce an imminent critique of the existing world order’ (2007: 204). We have seen how Yogyakarta street children invoked the language of human rights to critique the local authorities’ use of the law to remove them from the streets. Liebel applies these ideas to the field of children’s rights and uses the notion of “children’s rights from below” to show that children are social subjects who can contribute to the transformation of society and be ‘actively involved in the interpretation, realisation and reworking of children’s rights’ (2012: 14). Taking a position against a top-down approach to children’s rights, he claims that ‘rights thought up and formulated by children themselves have a more direct and concrete connection to their lives and their ideas of a just and equitable existence’ (2012: 14). In a similar vein, Vandenhoele claims that when used in struggles to change the balance of power in favour of the disadvantaged, the language of children’s rights represents a ‘moral political force’ (2012: 103). The notion of children’s rights from below is therefore concerned with local practices of rights that inform the discourse or interpretation that is given to what social justice in practice entails. The focus of the approach is on social movements, as in the case of the movements of working children (Nieuwenhuys, 2009; Liebel, 2013). Being critical of how existing practices and state laws work in tandem to discriminate and exclude, movements such as those of working children seek to change the law. They therefore question the binary thinking so prominent in legal pluralism that sees living law and state law as two separate legal fields. However, there are two difficulties here that risk reintroducing binaries into the analysis through the back door: first, the distinction between children’s rights from below vs. those from above and, second, the assumption that children would only be able to access their rights through

social movements. Both these binaries exaggerate, we feel, the role of concerned outsiders struggling against social injustice to support marginalised children and teach them the language of rights. This raises a series of questions. What if there are no such outsiders, does this mean that marginalised children are unable to exercise agency and creatively address the challenges of keeping their end up in the most daunting situations? How do we conceptualise the ability to make a life in such a situation? What normative framework inspires the creative forms of resilience, resistance and subversion that street children, such as those in Yogyakarta, deploy whilst living on the streets? Has this framework anything to do with notions of rights and who has the authority to decide what rights are?

In sum, we find inspiration from legal pluralists' understanding of the relation between law and society as complex, incomplete and in continuous flux. But we also feel that living law leaves unaddressed the horizons of meaning of those who, like street children in Yogyakarta, cannot cast their claims in a recognised legal idiom. Rather than law, these claims can be better made sense of in an idiom of rights, particularly as human rights from below. We are nevertheless also aware that the latter's implicit reference to human rights from above risks introducing new binaries in the analysis. By attributing a critical role to social movements and human rights activism, the notion fails to account for marginalised children's day-to-day practices, concerns and inventiveness that form the "substratum" on which activism feeds. In the next section, we contend that the dynamic underlying how children's rights are interpreted, made use of and contested, can best be captured within the notion of living rights.

3 Children's Living Rights and Their Translations

In this section we contend that emphasising children's agency in living with and through their rights moves the vectors of the debate from what children's rights are to the interplay between how children understand their rights and the way other players strategically make use of rights claims on children's behalf. This means that claims made on behalf of children do not *necessarily* correspond to children's own understanding. It is up to empirical scrutiny to verify the relative similarity or distance between the two. In what follows we first outline the contours of the notion of living rights. This allows us, second, to focus on the unstable in-between field where law and society meet and come together, and zoom in on the interplay between the various actors making claims about children's rights. With the notion of translations, finally, we highlight

that different actors' continuous translation of competing interpretations of children's rights is what makes children's rights *living*.

The concept of living rights is built upon a non-essential vision of what rights are and this is our first point. This vision entails that various actors, including children themselves, constantly re-interpret what children's rights are or ought to be. Since Hillary Rodham (1973) famously claimed that 'the phrase "children's rights" is a slogan in search of definition', disagreement has continued unabated among the national and international treaty monitoring bodies, specialised intergovernmental organisations and large NGOs that have entered the field.

The Yogyakarta controversy described above illustrates how the Provincial Department of Social Affairs, representatives of local NGOs concerned with street children, Gama's street movement and Save, amongst others, diverged in their views on a centre piece of child rights legislation. We contend that disagreement is not a weakness that should be remedied, but the inescapable result of children's rights being alive. As the controversy suggests, street children's perceptions of their rights became visible when a repressive draft law threatened every aspect of their lives and those of their community. The threat revealed that even if they lived on the fringe of existing legal frameworks, the children believed in and put into practice rights to life, to expression, to relationships and to income-earning. Law-makers' attempt at prohibiting their interactions with the public betrayed the extent to which these rights could rely on local support. Thus children's failure to claim these rights with reference to the existing laws or provisions contained in the CRC does not mean that their rights did not exist. However, this does not mean that we conceive of living rights as only those of the excluded.

Living rights should be understood as, first, entitlements of agentic persons or collectives who can act upon the inevitable contradictions and tensions they often contain. This implies, second, that rights cannot be static and settled once and for all and that what were once only norms or even taboos may be transformed into legal rights and vice versa. Living rights are therefore continuously reinvented in the face of changed circumstances. Finally, even before they are codified and find their way into law, living rights are already there, in the daily lives and struggles of people confronting the challenges of everyday life and trying to make the most of their situation. Our point is that this is *also* true of the rights of those, such as street children, whom the state and even the outsiders who claim to speak in their name 'from below', exclude. This brings us to the actors who speak in the name of children and take centre-stage in law-making.

As such, we have no problem with development NGOs or specialised UN entities that speak on behalf of children whose rights are being violated or

threatened. Our point is that this does not necessarily imply that their claims correspond to children's own understanding of their rights. A useful framework for addressing possible discrepancies playing out in almost any human rights advocacy field, is the 'problematic of representational power' (Baxi, 2002; Stammers, 2013). This 'problematic' urges those speaking on behalf of others to ensure that they 'properly represent the interests, views and demands of those they claim to be representing' (Stammers, 2013: 283). The 'problematic' is, as Stammers pointedly observes, particularly at stake in the field of children's rights, where spokespersons are overwhelmingly adult. In an advocacy field where different viewpoints exist and in which the concerned subjects, children, can be considered as having insufficient agency to defend their own case, as in Yogyakarta, the question whose interests are being represented in the name of children's rights is a complex but necessary one.

The concept of translations, that deals with what happens with rights in the encounter between movements for social justice representatives and the authorities, is helpful here (Hanson and Nieuwenhuys, 2013). For Merry, intermediaries play a key role and 'reframe local grievances up by portraying them as human rights violations. They translate transnational ideas and practices down as ways of grappling with particular local problems' (2006: 42). Working at 'various levels to negotiate between local, regional, national, and global systems of meaning' (Merry, 2006: 39), intermediaries not only speak both the vernacular and international languages but are also capable of navigating between the two systems of meanings. Simultaneously a street movement's leader and an NGO worker involved in negotiations with other NGOs and the local government, Gama is an example of such an intermediary. As it makes him stand in the middle, Gama's role is, however, uncertain. When during the protests he switched roles from NGO worker to street movement's leader, his colleagues at other NGOs supporting the campaign against the draft law, distrusted him and tailed off. The situation did not change even after the deadlock, when the parties came together again thanks to Save's mediation. He was still perceived as a radical and a liability in the drafting process. Unable to get the street children involved again, he missed their backing whilst engaging in the complex exercise of reframing their demands in the language of children's rights, which further increased the ambiguity of his role as an intermediary.

Living rights help uncover the fact that the 'problematic' of representational power is not limited to clashes between local versus global perspectives on children's rights, which are of central concern for the human rights from below approach. The approach addresses tensions between powerful institutions (state actors, elites, the international community, etc.) and social movements struggling for the recognition and respect of the rights of their constituents.

Importantly, the notion acknowledges that this struggle is not something that is carried on “out there” on the margins of social life, but that it permeates all levels of law making and is at the heart of the conflicts that human rights legislation seeks to resolve or stabilise. The notion is reminiscent of Flax’s discussion, inspired by Winnicott’s notion of transitional spaces, of justice as a process engaged with ‘how to reconcile or tolerate differences between self and others without domination’ (1993: 340). The distance between Western funded development NGOs imposing their interpretations of what children’s rights are and grass-root NGOs or social movements claiming to represent local perspectives, is a case in point. In Flax’ words: ‘whenever the third space is transformed into a mirror of one set of “objective” standards or “normative” practices’ (1993: 341), reciprocity, justice’s active complementary, is absent and domination prevails. The living rights notion’s emphasis on agency implies that for justice to be present, grass-root NGOs and social movements, such as the street movement in Yogyakarta, cannot escape critical scrutiny. Like other actors in the field, they too must deal with possible discrepancies between children’s claims and those made on their behalf. They are hence not only contesters opposing centralising and homogenising forces, such as State institutions, Western funded NGOs or businesses, but also translators who exercise their influence in defining human and children’s rights claims, priorities and strategies.

There is then not a single but many in-between fields in which translators strategically navigate the semantic fields (Olivier de Sardan, 1995) between the local and global perceptions of children’s rights. Their encounter with otherness reveals the tensions arising from different understandings of the social world and its framing in the language of human rights (Goodale, 2007; Droz and Lavigne, 2006). In this encounter, self-declared or appointed translators risk misunderstanding or misrepresenting local realities. According to Yanow (2004), to understand such complex translation processes, three fields of expertise need to be investigated, namely the two fields being translated to each other as well as the, often invisible, act of translating itself.

4 Conclusion

In this article we have related a case study in Yogyakarta about street children’s involvement in a street people’s protest against a repressive draft law that would criminalise their life on the streets. During the protests the children forwarded claims about their right to live and work safely on the streets. The protest met with some success, and the draft was eventually withdrawn. Subsequent negotiations under the guidance of Save, an international children’s

rights NGO, led to the adoption of legislation on the protection of children living on the street. The adopted law is framed in accordance with international conceptions of children's rights and aims at removing children from street life. No children were, however, involved in drafting this law, that completely disregards the rights claims street children put forward during protests against the earlier draft law. Disregarding these claims intimates, we argue, that the law will make very little difference for those children who do not want to be "rescued" but who want to live and work safely on the streets of Yogyakarta.

Underscoring that rights are living, also in the minds and through the practices of children, the notion of living rights is critical of an understanding of children's rights that limits them to a fixed catalogue of rights. Taking a critical distance from the fields where children's rights are invoked, the notion facilitates, we argue, empirical enquiries into competing understandings that include children's conceptions of their rights (or absence thereof). The notion's concern with the competing rights perspectives of different actors differs from the legal pluralist notion of living law, which focuses on competing institutional perspectives between legal systems. Lastly, emphasising children's agency, the notion promotes inquiry into discrepancies in rights interpretations between children and local support movements, and opens up their practices for scrutiny.

We believe that when reflecting on the many intertwined levels where contrasting viewpoints and meanings around children's rights and human rights are confronted, researchers and practitioners should include children's and other people's conceptions of rights. We contend that the living rights notion can provide a thicker picture of the multiple conceptions at play in clashes over rights, the more so if supplemented with the notion of translation. The study of Yogyakarta's street children's rights illustrates that the implementation of rights is not limited to the translation between the international, national and local levels. Translations also occur between different organisations, between headquarter and field levels within the same organisations, and between organisations and the people they claim to represent. As our case study suggests, translations of children's rights take place in many of these "transitional spaces" (Flax, 1993) between an indeterminate number of actors functioning at different governance levels and adhering to different worldviews. In each of these spaces and between all these actors, different forms of translation occur. We see living rights and translations primarily as conceptual tools that can help to understand how divergent viewpoints over children's and human rights are played out in particular contexts. However, the notions do not explain the outcome of such translations, which is, as we have highlighted in this article, a question that belongs to the empirical rather than the conceptual domain.

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