

# THE IMPORTANCE OF A RIGHTS-BASED APPROACH TO INVESTMENT IN CHILDREN

Submission of the Child Rights International Network (CRIN) to the OHCHR report on a better investment in the rights of the child

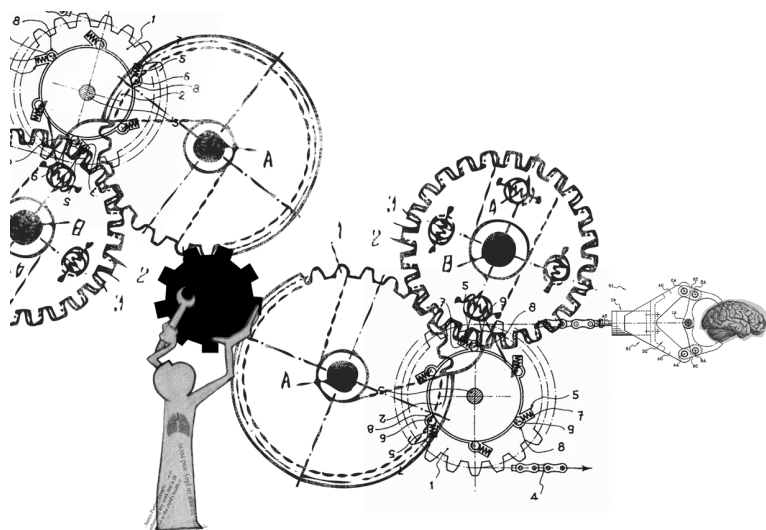
**CRIN's submission asserts the importance of a rights-based approach to investment in children. It reviews the impact of decisions about government spending on particular children's rights, and mechanisms to guarantee these – especially in the context of austerity measures. This includes summaries of legal challenges to budget cuts which affect the enjoyment of children's rights.**

Investment in children must be rooted in States' obligations under the CRC

It is well known that children are disproportionately affected by poverty, just as they suffer disproportionately from the impact of spending cuts. This reflects children's low status, lack of income and their exclusion from the legal and political processes which are crucial for claiming their rights and influencing economic policy. In addition, children's developing physical, mental and emotional state makes them more vulnerable to the consequences when their rights are violated.

For children's rights to graduate beyond a piece of paper, they must be backed up by investment, including in effective mechanisms to protect them. This investment - which goes beyond financial resources to include human and organisational resources<sup>1</sup> - must be grounded in State obligations under the UN Convention on the Rights of the Child (CRC), particularly article 4 (see below). A rights-based approach to decisions about resource allocation is critical because it tackles the structural causes of rights violations, instead of blaming individuals for being poor or bestowing help out of charity.

This approach still holds in times of economic hardship. The Committee on the Rights of the Child has said that States parties must demonstrate that "children, including in particular marginalised and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns",<sup>2</sup> noting that no economic policy is child rights neutral.<sup>3</sup> And Thomas Hammarberg, former Commissioner for Human Rights at the Council of Europe, has cautioned: "Economic and social rights have not been defined in a vacuum; they are based on the experience of



<sup>1</sup> Recommendations from the CRC Day of General Discussion on "Resources for the rights of the child - responsibility of States", 2007, para. 24.

<sup>2</sup> UN Committee on the Rights of the Child, General Comment No. 5 on general measures of implementation of the Convention on the Rights of the Child, November 2003, para. 51, available at: [http://www2.ohchr.org/english/bodies/crc/docs/GC5\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC5_en.doc)

<sup>3</sup> *Ibid.*, para 52

past crises and on the knowledge that ignoring social justice comes at an enormous cost. They can also serve as very useful guiding principles for political decision makers at a time when difficult choices have to be made.”<sup>4</sup>

### CRC article 4: the foundation for States’ obligation to invest in children’s rights

Article 4 of the CRC obligates States parties to implement the Convention by taking “all appropriate legislative, administrative, and other measures”. Where economic, social and cultural rights are concerned, States should take such measures to “the maximum extent of their available resources” and, where necessary, seek international cooperation.

The caveat “to the maximum extent of available resources” recognises the practical difficulties for some States in meeting their obligations. However, the Committee has noted that there is no definitive list of what constitutes economic, social and cultural rights versus civil and political rights<sup>5</sup> and that they should be equally justiciable.<sup>6</sup> In addition, although the Committee has yet to develop extensive interpretation of the economic and social rights set out in the CRC, it has emulated the approach of the Committee on Economic, Social and Cultural Rights (CESCR) on the subject.<sup>7</sup> Firstly, it has clarified that article 4 “imposes an immediate obligation for States parties to undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights of children”.<sup>8</sup> It has also adopted the idea of a “minimum core”<sup>9</sup> of these rights as set out by the International Covenant on Economic, Social and Cultural Rights<sup>10</sup> i.e. “to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights” regardless of resources and if necessary with international cooperation. The Committee has emphasised that States cannot know whether they are doing this “to the maximum extent of their available resources”, unless they “can identify the proportion of national and other budgets allocated to the social sector and, within that,

to children, both directly and indirectly.”<sup>11</sup> The Committee requests information on steps taken at all government levels to ensure that the best interests of the child are taken in any investment and budgetary decisions. It expresses concern where spending on children is not disaggregated in total public expenditures,<sup>12</sup> which forms part of a child rights approach to allocating resources for children.

The Committee has also warned that “the obligation not to take any retrogressive steps that could hamper the enjoyment of economic, social and cultural rights is considered to be inherent in the obligation towards progressive realization of those rights.”<sup>13</sup> The CESCR has gone further, clarifying in a letter to States the particular requirements that any proposed policy change must meet in order to comply with the ICESCR, highlighting children as one of several marginalised groups which should not be disproportionately affected.<sup>14</sup>

### Investment in particular children’s rights

Despite the obligations set out by these bodies, decisions about how resources are allocated continue to violate the full spectrum of children’s rights. This is an illustrative list, which includes examples of legal challenges.

### Right to survival and development

CRC article 6 recognises every child’s inherent right to life and the obligation of States to ensure “to the maximum extent possible the survival and development of the child”. This includes a requirement on States to adopt positive measures, including economic and social policies, to benefit children and allow them to survive into adulthood in conditions optimal for their development.<sup>15</sup> The Human Rights Committee has commented that the right to life is “the supreme right from which no derogation is permitted even in times of emergency”.<sup>16</sup> This has been confirmed by the European Court of Human Rights in the case of *Nencheva v. Bulgaria (2013)* in which the Court ruled that the national authorities could have prevented the deaths of children with disabilities in State care. These were caused by the inability of the local authorities to bear the cost of food and other necessities, as a result of hyperinflation during the winter of 1996-1997, which affected the budget allocated to the children’s institution. The Court ruled that as information about the serious risk to the lives of the children had been available as early as September

4 Council of Europe, “Human Rights in Europe: Time to honour our pledges - Viewpoints by the Council of Europe Commissioner for Human Rights,” 2009, p. 6, available at: [http://www.agora-parl.org/sites/default/files/publication2009\\_en.pdf](http://www.agora-parl.org/sites/default/files/publication2009_en.pdf)

5 CRC General Comment No. 5, para. 6.

6 Ibid

7 Nolan, A., Economic and Social Rights, Budgets and the Convention on the Rights of the Child, p. 13, available at: <http://www.eschr-net.org/sites/default/files/Aoife.pdf>; Hodgkin, R. & Newell, P., Implementation Handbook for the Convention on the Rights of the Child: Fully Revised Third Edition. UNICEF, September 2007, Vol. 1, pp. 52-3

8 CRC Day of general discussion 2007, para. 47.

9 Ibid, paras 48-9

10 “Essential foodstuffs, equal access to primary health care, basic shelter and housing, social security or social assistance coverage, family protection, and basic education”, CRC Day of General Discussion 2007, reflecting ICESCR, General Comment No. 3, para. 10

11 CRC General Comment No. 5, para. 51

12 Concluding Observations for Venezuela’s third to fifth periodic reports, September 2014, paras. 16-18

13 Day of General Discussion 2007, para. 47.

14 ICESCR, “Letter from CESCR Chairperson to States Parties in the context of the economic and financial crisis”, CESCR/48th/SP/MAB/SW, 16 May 2012, available at: <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>

15 CRC General Comment No. 5, p. 4

16 HRC General Comment No. 6 on the right to life, 1982, p. 167, para. 5, available at: <http://www1.umn.edu/humanrts/peace/docs/hrcom6.htm>

1996, i.e. three months prior to the first death, by failing to provide additional funding to the institution, the state had violated the right to life of the children.<sup>17</sup>

### Rights to health and health services

Universal access to health care belongs to the core content of children's right to the highest attainable standard of health set out in article 24.<sup>18</sup> The Committee's General Comment No. 15 on the subject indicates that, "Irrespective of resources, States have the obligation to not take any retrogressive steps that could hamper the enjoyment of children's right to health."<sup>19</sup> But this right is threatened by austerity measures in many countries, which restrict access to healthcare for certain groups, to certain types of treatment, and the quality of treatment. For example, charities in England have warned that cuts to child and adolescent mental health services are leading to a situation in which only children with the most serious mental illnesses receive treatment, and many are ending up in police cells, being transferred to distant locations or placed inappropriately on adult wards because no beds are available.<sup>20</sup> In Greece, the Commissioner for Human Rights at the Council of Europe highlighted a sharp increase in infant mortality (43 percent) from 2008 to 2010, raising concerns about access to pre-natal care by pregnant women.<sup>21</sup> Vulnerable population groups are particularly affected as a result of discrimination and lack of insurance. Spain for example has excluded undocumented migrants from accessing free healthcare for all but emergency health services.<sup>22</sup>

However, a number of court decisions have recognised the vulnerability of children compared to adults in relation to the provision of health care. The European Committee of Social Rights found that France acted contrary to the rights of children, but not adults, by ending the exemption of illegal immigrants with very low incomes from charges for medical and hospital treatment, under article 13 of the Revised European Social Charter.<sup>23</sup> The Constitutional Court of Colombia has also recognised the unique status of children, ruling that their right to health - but not that of adults - is established as fundamental in the Constitution, and is

immediately enforceable.<sup>24</sup>

### Right to protection from all forms of violence

Article 19 emphasises that State parties must have proper laws in place to prohibit violence, but it also requires States to implement administrative, social and educational measures to protect children. In particular, paragraph 2 outlines the protective measures that a State party is required to undertake, including the establishment of social programmes and mechanisms for addressing cases of child maltreatment.

This right is undermined where government spending on child protection is cut, potentially resulting in a lack of response, investigation and intervention following reporting; lack of trained staff in institutions; an increase in the unnecessary use of drugs to subdue children; a lack of data collection and shortage of service provision. A charity in England for example has warned of serious funding gaps and provision for women experiencing domestic violence. Those services that responded to a survey reported that in a single day in 2013, 155 women and 103 children were turned away from the first refuge they approached as a result.<sup>25</sup>

### Right to education

Article 28 requires States to ensure free and compulsory education for all. Different forms of secondary education and vocational guidance should be "available and accessible" to all. Higher education should be available on the basis of capacity. The CRC has said that it expects to see States allocating more resources to their education budget as their GDP grows. If this shrinks, States should refrain from cuts to the education budget.<sup>26</sup>

However, in many places children's right to education is in danger of reversal. The Independent Expert on the question of human rights and extreme poverty has warned of the increased prevalence of children dropping out of school and a resurgence in child labour.<sup>27</sup>

Cuts also have implications for the quality of education, which is eroded as a result of larger classes, fewer trained teachers, the imposition of charges for materials, the dropping of subjects like human rights and citizenship, less support for inclusive education, the impact of privatisation, dangers

<sup>17</sup> Nencheva and Others v. Bulgaria, June 2013, available at: <https://www.crin.org/en/library/legal-database/nencheva-v-bulgaria>

<sup>18</sup> UN Committee on the Rights of the Child, General Comment No.15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 73.

<sup>19</sup> Ibid, para. 72.

<sup>20</sup> Young Minds, "Devastating cuts leading to children's mental health crisis", 21 June 2014, available at: [http://www.youngminds.org.uk/news/news/2094\\_devastating\\_cuts\\_leading\\_to\\_childrens\\_mental\\_health\\_crisis](http://www.youngminds.org.uk/news/news/2094_devastating_cuts_leading_to_childrens_mental_health_crisis)

<sup>21</sup> Nils Muiznieks, Commissioner for Human Rights at the Council of Europe, "Human Rights Comment: Maintain access to universal healthcare", 7 August 2014, available at: <http://www.coe.int/en/web/commissioner/-/maintain-universal-access-to-health-care>

<sup>22</sup> Ibid

<sup>23</sup> FIDH v. France, September 2004, available at: <https://www.crin.org/en/library/legal-database/fidh-v-france>

<sup>24</sup> Constitutional Court of Colombia, Tutela Judgment, T-200/93, available at: <http://www.corte-constitucional.gov.co/relatoria/1993/t-200-93.htm>

<sup>25</sup> Women's Aid, "Women's Aid warns of crisis in domestic violence services" 3 December 2013, available at: <http://www.womensaid.org.uk/domestic-violence-press-information.asp?itemid=3194&itemTitle=Women%92s+Aid+warns+of+crisis+in+domestic+violence+services&section=0001000100150001&sectionTitle=Press+releases>

<sup>26</sup> UN Committee on the Rights of the Child, Concluding Observations for Italy's third and fourth periodic reports, CRC/C/ITA/CO/3-4, 2011, para. 61)

<sup>27</sup> Maria Magdalena Sepúlveda Carmona on the human rights based approach to recovery from the global economic and financial crises, with a focus on those living in poverty, UN Doc.A/HRC/17/34 2011, para. 31.

caused by poor maintenance of buildings and less nutritious meals.

Recent legal challenges to budgetary restrictions include a decision by a Texas County Court which ruled against the state in a case brought by over 600 school districts. The judge ruled that by cutting the education budget by \$5.3 billion in 2011, the state had failed to meet its constitutional duty to establish and provide adequate support and maintenance of the free public school system. The judgment holds that the current state of the school system cannot provide a constitutionally adequate education for all Texas schoolchildren and gives the government one year to remedy the deficiencies. The judge found that, even after the State reinstated \$3.5 billion, the school system was underfunded, over-extended and unfairly distributed, resulting in gaps in educational testing scores between poor and rich Texas students.<sup>28</sup>

### **Rights to social security, adequate standard of living**

Regressive measures that discriminate against children violate articles 26 and 27 (the right to benefit from social security and to enjoy an adequate standard of living respectively). For example, among austerity measures implemented in Greece, the minimum wage has been reduced by more for young people compared to the rest of the population.<sup>29</sup>

In India, in a case relevant to CRC article 27, which includes the right to adequate nutrition, the People's Union for Civil Liberties achieved legal enforcement of the right to food, claiming that people had died of starvation in the state of Rajasthan even though a surplus of grain was being kept in government granaries for times of official famine. The court affirmed the right to food as necessary to uphold Article 21 of the Constitution of India, which guarantees the fundamental right to "life with human dignity." As part of its ruling, the Court issued several orders strengthening various social security schemes, including a mid-day meal scheme in schools, and an integrated child development scheme.<sup>30</sup>

### **Investment in mechanisms to protect children's rights**

Any effective investment in children's rights must include investment in mechanisms to protect those rights. Without access to justice - broadly defined to include effective

remedies as well as practicalities such as legal aid - rights are illusory - a point recognised by the Committee on the Rights of the Child.<sup>31</sup> For details of the components needed to make children's access to justice a reality, see CRIN's submission to the OHCHR report on access to justice.<sup>32</sup>

Children face particular barriers to accessing justice because of their inexperience with the legal system and/ or inability to secure advice and representation due to a lack of resources. This makes State governed and funded legal aid services across all proceedings and settings one of the best ways to ensure children are able to access justice in an effective and timely manner. The Committee on the Rights of the Child has explicitly recognised that legal assistance for children should be free of charge.<sup>33</sup>

However, a lack of legal assistance and aid prevails in many countries. Ethiopia<sup>34</sup> and Vanuatu,<sup>35</sup> for example, have no formalised legal aid system, making children reliant on pro bono or NGO support. Elsewhere, States make no special provisions for children and may have due regard to their available resources in deciding whether to grant legal aid (Namibia).<sup>36</sup> And in other States, although the right to legal aid exists on paper, the system does not function in practice (Republic of the Congo).<sup>37</sup>

Access to justice for the most marginalised, including children, should also be prioritised during times of economic crisis. States parties should take all efforts to maintain low-threshold complaints mechanisms such as children's ombudsmen or other human rights bodies and to ensure wide coverage of the legal aid system.

Cuts to the provision of legal aid have been a particular issue of contention in the context of austerity. In England and Wales, the Government has come under fire for drastically reducing entitlement to legal aid in many areas of civil law<sup>38</sup> with the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 without proper cost studies. This thwarts

28 CRIN, Children in Court CRINmail, 17 September 2014, available at: <https://www.crin.org/en/home/what-we-do/crinmail/children-court-crinmail-39-0#>

29 Law 4046/2012 provides for a reduction of 22 percent in general and 32 percent for young people under 25 years of age. European Labour Law Network, March 2012, available at: [http://www.labourlawnetwork.eu/national\\_labour\\_law\\_latest\\_country\\_reports/national\\_legislation/legislative\\_developments/prm/109/cs\\_11/v\\_detail/id\\_2622/category\\_14/size\\_1/index.html](http://www.labourlawnetwork.eu/national_labour_law_latest_country_reports/national_legislation/legislative_developments/prm/109/cs_11/v_detail/id_2622/category_14/size_1/index.html)

30 People's Union for Civil Liberties v. Union of India & Ors, In the Supreme Court of India, Civil Original Jurisdiction, Writ Petition (Civil) No.196 of 2001, available at: <http://www.hrln.org/hrln/right-to-food/pils-a-cases/255-pucl-vs-union-of-india-a-others-.html>

31 CRC General Comment No. 5, p. 7, para. 24

32 Submission of the Child Rights International Network (CRIN) to the OHCHR Study on Access to Justice for Children, September 2013, available at: [https://www.crin.org/docs/CRIN\\_Access\\_to\\_justice\\_submission\\_Final.pdf](https://www.crin.org/docs/CRIN_Access_to_justice_submission_Final.pdf)

33 UN Committee on the Rights of the Child, General Comment No. 10 on children's rights in juvenile justice, para. 49, available at [http://www2.ohchr.org/english/bodies/crc/docs/GC10\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC10_en.doc).

34 Child Rights International Network, Ethiopia: Access to justice for children, January 2014, p. 4, available at: <https://www.crin.org/en/library/publications/ethiopia-access-justice-children>

35 Child Rights International Network, Vanuatu: Access to justice for children, February 2014, p. 3, available at: <https://www.crin.org/en/library/publications/vanuatu-access-justice-children>

36 Child Rights International Network, Namibia: Access to justice for children, January 2014, p. 6, available at: <http://crin.org/node/38521>

37 Child Rights International Network, Republic of the Congo: Access to justice for children, May 2014, p. 4, available at: <https://www.crin.org/en/library/publications/republic-congo-access-justice-children>.

38 See the scope of areas affected in Just Rights, "The effect of LASPO Act 2012 on children and young people", available at: <http://justrights.org.uk/sites/default/files/The%20effect%20of%20LASPO%20Act%202012%20on%20children%20and%20young%20people.pdf>

any attempt to claim that savings are proportionate to the limitations they impose on rights. For instance, the government was unable to provide an indication of the costs saving that will be made by applying the need to satisfy a residence test to qualify for legal aid to children.<sup>39</sup> The residence test has been successfully contested at the Divisional Court by the Public Law Project, with an intervention by the Children's Commissioner. The Court ruled that the residence test is "unauthorised, discriminatory and impossible to justify".<sup>40</sup>

Another example of knock-on costs associated with limited access to legal aid is the sharp decline in the number of family cases going to mediation because lawyers are no longer available to give advice on out of court solutions - a cheaper alternative to court cases.<sup>41</sup> Even where children aren't directly affected, the number of voluntary sector advice agencies undertaking legal aid work is reported to be likely to fall from 270 to a few dozen.<sup>42</sup>

## Conclusion and recommendations

Children's particular vulnerability to violations of their rights as a result of insufficient investment doesn't just "happen", States allow it to happen when they fail to fulfill their obligations under the UN Convention on the Rights of the Child.

With this in mind, CRIN urges the OHCHR to address the following issues in its report:

- guarantee children's rights is a necessary part of realising those rights;
- Urge respect for the role of civil society in relation to austerity to ensure cooperation in decisions about budget cuts. This should enable civil society to continue monitoring the consequences of cuts for children's rights and providing independent services, including advocacy, to those affected.
- Emphasise that any investment in children should be anchored in States' obligations under the UN Convention on the Rights of the Child, particularly article 4;
- Recognise that, because of their unique vulnerability, children's economic and social rights should be a priority for States in seeking to realise these rights for everyone;
- Address age discrimination against children in claiming their economic and social rights, particularly the need to ensure their access to the political and legal processes that enable them to influence policy and claim their own rights on their own behalf or through an advocate;
- Urge States to conduct child rights impact assessments of social and economic policies and budgets;
- Emphasise that investing in effective mechanisms to

<sup>39</sup> House of Commons Joint Committee on Human Rights, "Legal aid: children and the residence test", First Report of Session 2014-15, p. 11, para. 30, available at: <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/14/14.pdf>

<sup>40</sup> The Public Law Project, R (On the Application Of) v The Secretary of State for Justice the Office of the Children's Commissioner EWHC 2365 (Admin), 15 July 2014

<sup>41</sup> Resolution First for Family Law, "Resolution gives evidence to Justice Select Committee on the need to reform family legal aid", 2 September 2014, available at: [http://www.resolution.org.uk/news-list.asp?page\\_id=228&page=1&n\\_id=237](http://www.resolution.org.uk/news-list.asp?page_id=228&page=1&n_id=237)

<sup>42</sup> Just Rights, 2012

**About CRIN ([www.crin.org](http://www.crin.org))**

Our goal: A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

Our organisation: CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

Our work is based on five core values:

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

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