

Child rights report to the High Level Political Forum global review of the 2030 Agenda for Sustainable Development

Freedom from poverty is not explicitly recognised as a human right in any international human rights treaty, but poverty can prevent the realisation of the full range of children's rights. The right to an adequate standard of living (which includes housing and food), to health, education and freedom from discrimination, are core principles of the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social and Cultural rights (ICESCR). According to the Office of the High Commissioner for Human Rights, "no social phenomenon is as comprehensive in its assault on human rights as poverty. Poverty erodes or nullifies economic and social rights such as the right to health, adequate housing, food and safe water, and the right to education. The same is true of civil and political rights, such as the right to a fair trial, political participation and security of the person."¹

Children are concerned and affected by all of the sustainable development goals (SDGs), whether reduction of poverty, hunger, inequality or climate change. Promoting a holistic approach to children's rights, one where children are not only seen as part of vulnerable groups but are treated with respect as individuals instead is fundamental to any poverty reduction initiative. As UNICEF has noted, the rights enshrined by the CRC, run through the SDGs² and so the realisation of these goals must take into account the corresponding rights of children. It is therefore essential to review the 2030 Agenda with the aim of highlighting the human rights, including children's rights, relevant to each goal and their implementing methods.

Any action to end child poverty should look at the structures that create poverty. They should also go hand in hand with an action to realise all children's rights, including their economic, social and cultural rights, but also their civil and political rights. This submission will focus on some of the significant issues that risk being underdeveloped, mainly access to justice, private sector accountability and violence against children (under component I on cross-cutting considerations); and toxic chemicals (under component II the protection and realisation of children's rights with respect to the SDGs under review - Goal 3).

Access to justice for children

¹ Office of the High Commissioner for Human Rights, *Human rights dimension of poverty*, introduction to the report on report on the importance of social protection measures in achieving the Millennium Development Goals - A/65/259, published on 9 August 2010, available here:

<http://www.ohchr.org/EN/Issues/Poverty/DimensionOfPoverty/Pages/Index.aspx>.

² For detailed analysis, see UNICEF, *Mapping the Global Goals for Sustainable development and the Convention on the Rights of the Child*, available at: http://www.unicef.org/agenda2030/files/SDG-CRC_mapping_FINAL.pdf.

Children living in poverty are disproportionately affected by the challenges they face in accessing justice. The Special Rapporteur on extreme poverty and human rights, in her 2012 report to the UN General Assembly, outlines the main obstacles impeding people living in poverty from accessing justice, such as the cost of legal advice, administrative fees and other collateral costs. She also refers to the many laws that are inherently biased against persons living in poverty, particularly those which do not recognise or prioritise the abuses they regularly suffer, or have a disproportionately harsh impact on them.³

Access to justice is a fundamental right itself and a requirement that underlies all the SDGs. It is an essential prerequisite for the protection and promotion of all other human rights.⁴ Access to justice for children means that children, or their appropriate advocates where applicable, must be able to use and trust the legal system to protect their human rights. The legal system must provide children the means to protect their rights; the means to prevent and solve disputes; mechanisms to control the abuse of power; and all of this must be available through a transparent, efficient, accountable and affordable process.⁵

Equality and non-discrimination - In the context of access to justice, equality and non-discrimination requires that children are not excluded from accessing justice and that specific groups of children are not barred from accessing justice in particular. For instance, around the world legal systems commonly institute strict age based rules that require children to approach the courts and register complaints through a representative. This representative might be a child's parent, litigation guardian, guardian ad litem or "next friend" who is empowered to make decisions about how to proceed in court. Children will often need and want this kind of support to engage with the legal system, but where these rules are based simply on an arbitrary age limit rather than the capacity of any given child, they can bar children from seeking remedies for abuses of their rights when they are capable of doing so independently. Additionally, in many jurisdictions, this barrier can be compounded by rules requiring parental consent for a child to make a complaint. Overtly discriminatory provisions clearly undermine the protection of children seeking to challenge violations of their rights, but even where the authority lies with parents and guardians more broadly, these restrictions can still be harmful. Rules prohibiting children from bringing complaints against their parents without the consent of the public prosecutor⁶ or

³ Magdalena Sepúlveda Carmona, UN Special Rapporteur on extreme poverty and human rights, *Extreme poverty and human rights*, A/67/278, 9 August 2012, available at: <http://www.ohchr.org/EN/Issues/Poverty/Pages/Accessstojustice.aspx>.

⁴ OHCHR, *Report of the United Nations High Commissioner for Human Rights: Access to justice for children*, A/HRC/25/35, 16 December 2013, para. 3.

⁵ See working definition adopted by the United Nations Development Programme Justice System Programme, *Access to Justice Concept Note*, February 2011: "Access to justice can be defined as the right of individuals and groups to obtain a quick, effective and fair response to protect their rights, prevent or solve disputes and control the abuse of power, through a transparent and efficient process, in which mechanisms are available, affordable and accountable."

⁶ See for example, Thailand Civil and Commercial Code, Section 1562.

requiring parental consent to lodge a complaint⁷ can create substantial barriers to children, particularly where their parents may be responsible for rights violations.

Legal aid and assistance - Very few children will be able to pay for legal advice and assistance without access to legal aid. Establishing a functioning state-funded legal aid and assistance programme that is accessible to children is key to ensuring that they are able to access justice for any violation of their rights. Despite the fundamental role of legal assistance and legal aid in realising access to justice, for children and adults alike, fully functioning state-funded legal aid systems are completely absent from 42 countries worldwide, meaning that 220 million children have no access to free legal aid for any type of legal action.⁸ A small number of States provide legal aid to children automatically where a particular type of legal action is covered by the legal aid system. Belgium, for example, has particularly strong and clear rules automatically exempting a child from paying all costs related to judicial proceedings.⁹

Accountability and monitoring - At the core of access to justice for children is ensuring that children's rights are enforceable and this means holding those who have duties to realise children's rights accountable when they fail to meet their obligations. This aspect of access to justice can be realised through a number of mechanisms, including enabling children to access administrative courts and complaint mechanisms to challenge the action or inaction of governments. Empowering national human rights institutions, including children's ombudspersons, to monitor progress of the State in realising children's rights and to directly address complaints from children or to bring complaints through the courts can also serve as an effective way of enforcing the obligations of the State and ensuring that remedies are particularly accessible for children.

*It is not possible to fully address every relevant aspect of access to justice for children in this short submission, for more information, please see CRIN's global research on access to justice for children,¹⁰ which includes individual reports for every country, and our recent global report, *Rights, Remedies and Representation: A global report on access to justice for children.*¹¹*

Violence against children

The UN Study on Violence Against Children remains the canonical international resource on violence against children, setting out detailed recommendations for the elimination of all forms

⁷ For example in Lao PDR, see UN Committee on the Rights of the Child, Concluding observations on the second periodic report of Lao PDR, CRC/C/LAO/CO/2, 8 April 2011, para. 30.

⁸ Child Rights International Network, *Rights, Remedies and Representation: A global report on access to justice for children*, January 2016, p. 29. Available at: www.crin.org/node/42383.

⁹ For full details see CRIN, *Access to justice for children: Belgium*, 23 April 2015, available at: www.crin.org/node/41373.

¹⁰ Available at www.crin.org/home/law/access.

¹¹ Available at: www.crin.org/node/42383.

of violence.¹² Adopting the recommendations of the UN's violence study is key to the protection and realisation of children's rights in the implementation of the 2030 Agenda. Ending all forms of violence against children is explicitly recognised by goal 16.2 and strengthened by goals 5.2 and 5.3 with regards to gender specific forms of violence, which are included within the focus of this review.

The core approach at the heart of the study was that no violence against children is justifiable; all violence against children is preventable.¹³ While goal 16.2 singles out specific forms of violence - as do goals 5.2 and 5.3 - the SDGs on violence together explicitly call for an end to "all forms of violence" against children. For this goal to be realised, all forms of violence in all settings must be targeted in line with the Study, whether by addressing the death penalty or other violent criminal sentences; corporal punishment at school or in the home; or economic and sexual exploitation.

The study's process to collect data and produce recommendations involved full consultation with States, UN agencies, civil society, experts around the world and for the SDGs to effectively target violence against children, the expertise gathered and represented in the Study should form the core of the approach to realise the relevant goals. In particular, the recommendations of the UN's violence study should be at the core of the 2030 agenda on violence against children:

1. Strengthen national and local commitment and action
2. Prohibit all violence against children
3. Prioritise prevention
4. Promote non-violent values and awareness raising
5. Enhance the capacity of all who work with and for children
6. Provide recovery and social reintegration services
7. Ensure the participation of children
8. Create accessible and child-friendly reporting systems and services
9. Ensure accountability and end impunity
10. Address the gender dimension of violence against children
11. Develop and implement systematic national data collection and research efforts
12. Strengthen international commitment

Private sector accountability

Businesses can have a huge impact on children, with the potential for violations of their rights present in virtually every economic sector. This ranges from breaches of labour standards, income inequality and abusive appropriation of land to patent law and environmental impact. The private sector played a prominent role in the SDGs' drafting process, and has been seen as

¹² Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence against Children, *World report on Violence Against Children*, 2006. Available at: <http://www.unviolencestudy.org/>.

¹³ *Ibid.* at p. 6.

vital in order to bridge the multi-trillion dollar funding gap. As such, throughout the SDGs the role of business in human development is mentioned in an entirely positive tone.

The role given to the private sector risks increasing its participation in the provision of public services, which poses a considerable threat to the safeguarding of children's rights. Privatisation of key services is seldom regulated properly by the State, leading to the dominance of commercial interests over children's interests. Yet it is States' obligation to ensure that all private actors who play a role in the provision of basic services are held accountable, and that they meet minimum standards as set out in human rights law. In its General Comment 16, the Committee on the Rights of the Child addressed this issue with the following language:

“States are not relieved of their obligations under the Convention and the Optional Protocols thereto when their functions are delegated or outsourced to a private business or non-profit organisation. A State will thereby be in breach of its obligations under the Convention where it fails to respect, protect and fulfil children's rights in relation to business activities and operations that impact on children.”¹⁴

As stated above, access to justice is a requirement that underlies all the SDGs. While the SDGs don't include an adequate mechanism for corporate accountability, it is essential for States to create such mechanisms, given the negative impact the private sector might have on human rights. These mechanisms must include a legal requirement on businesses to take steps to identify, prevent and address human rights abuses, with a special attention to the needs of children; and to hold businesses to account for human rights abuses they commit, allowing people whose rights have been abused to access justice and effective remedy.

Due diligence - As highlighted by the Committee on the Rights of the Child, States should require businesses to adopt child-rights due diligence measures to *ensure [they] identify, prevent and mitigate their impact on children's rights including across their business relationships and within global operations.*¹⁵

Access to remedies - The 2030 Agenda should place an emphasis on corporate accountability to prevent corporate human rights abuses and to hold companies to account. Access to remedies in the context of human rights and business activities is key and should be enhanced with reference to the specific needs of children with regards to access to justice. As noted by the Committee on the Rights of the Child: “[c]hildren often lack legal standing, knowledge of remedy mechanisms, financial resources and adequate legal representation.”¹⁶

¹⁴ UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, para. 25.

¹⁵ *Ibid*, paras. 62.

¹⁶ UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, 17 April 2013, CRC/C/GC/16, para. 4(c).

Toxic chemicals

All human beings endure the trespass of toxic chemicals. We breathe air, eat food and drink water which contain chemicals without giving our consent to their presence in our bodies. Children are particularly vulnerable because of their developing bodies. The UN Special Rapporteur on toxic wastes has highlighted that this has created a “silent pandemic” of disease and disability affecting millions of children worldwide.¹⁷ Children are exposed to toxic chemicals in many circumstances, even before they leave their mother’s womb. They are also exposed through the use of hazardous pesticides in food production or when engaging in agricultural work, or when playing nearby the fields that has just been sprayed, but also at home because of the cooking facilities, the pesticides/herbicides used, and through the substances used in toy production. The Special Rapporteur has also stressed that “Children in low-income, minority, indigenous and marginalized communities are at more risk, as exposure levels in such communities are often higher and are exacerbated by malnutrition, with the adverse effects inadequately monitored.”

Goals 1, 2, 3 and 9 of the SDGs under review are all relevant to this issue:

- Goal 1: in all countries, children in low-income communities are typically the most exposed to toxics and the most at-risk, e.g. malnutrition can exacerbate the adverse effects of toxic chemicals on developing children;
- Goal 2: food and agriculture is a major source of toxic chemical exposures. Highly hazardous pesticides remain in use in dangerous conditions, and foods contain many hazardous substances, from pesticides, to packaging.
- Goal 3: according to the WHO, over 1.7 million children under the age of 5 are still dying from modifiable environmental factors, such as air pollution and water contamination.¹⁸

The Committee on the Rights of the Child provides clear guidance on States’ obligations. The Convention of the Rights of the Child explicitly requires States to provide “adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution” (art. 24). In its General comment No. 15, the Committee urged States to take measures to address the dangers and risks that local environmental pollution poses to children’s health in all settings.¹⁹ General comment No. 16, on States’ obligations regarding the impact of the business sector on children’s rights, is also relevant, stating that “Childhood is a unique period of physical, mental, emotional and spiritual development and violations of children’s rights, such as exposure to (...) unsafe products or environmental hazards may have lifelong, irreversible and even transgenerational consequences”. It adds that “environmental degradation and contamination arising from business activities can compromise children’s rights to health, food security and access to safe drinking water and sanitation”.

¹⁷ Baskut Tunsak, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, report on Impact of Toxics and Pollution on Children’s Rights, A/HRC/33/41, 2 August 2016, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/41.

¹⁸ Figures for 2012: WHO, *Preventing Disease through Healthy Environments* (2016).

¹⁹ 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 (art. 24), 17 April 2013, CRC/C/GC/15.

