

“Protection of the Rights of the Child and 2030 Agenda for Sustainable Development”

Introduction

Children are affected by all of the sustainable development goals, whether poverty, hunger, inequality or climate change. Though the goals focus on sustainable development, they are inextricably linked to human rights generally and the rights of children specifically. As UNICEF has noted, the rights enshrined by the Convention on the Rights of the Child, run through the Sustainable Development Goals¹ and so the realisation of these goals must take into account the corresponding rights of children. The new goals are not revolutionary or a radical reinvention of rights and development standards, they set targets for development and the realisation of rights that already exist.

This submission will focus on two main issues: access to justice and violence against children. This focus is not to undermine the importance of realising children’s rights across the full ambit of the Sustainable Development Goals (SDGs), but to highlight aspects that risk being underdeveloped. This submission argues that access to justice should be seen as a goal that underlies and supports the realisation of all of the other goals, while goal 16.2, the elimination of violence against children, must build on the UN Study on Violence Against Children in order to be effective.

As requested in the call for information, where relevant, this submission will specifically address the following issues:

- a. Equality and non-discrimination
- b. Investing in children
- c. Partnerships for implementation
- d. Accountability and monitoring
- e. Other relevant considerations

Access to justice for children

Goal 16.3: “Promote the rule of law at the national and international levels and ensure equal access to justice for all.”

Access to justice, a fundamental right itself, is an essential prerequisite for the protection and promotion of all other human rights,² and as such, goal 16.3 underlies the implementation of all of the provisions set out by the SDGs. This broad coverage falls within all of the goals,

¹ 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.

² 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.

and economic rights as well as civil and political should be equally justiciable.³ The principles of access to justice apply equally in relation to climate change under goal 13, health rights under goal 3 and ending violence against children under goal 16. Similarly, States have an equal obligation to realise their obligations regardless of how they choose to deliver services, as noted by the Committee on the Rights of the Child, “States are not exempted from their obligations under the Convention [on the Rights of the Child] when they outsource or privatise services that impact on the fulfilment of children’s rights.”⁴

Within goal 16.3 is an explicit recognition that access to justice must be realised equally for all, and for this to be the case, it must be tailored to the specific needs of vulnerable groups, including children. In addressing discrimination against women and girls, goal 5.1 should be seen to bolster this approach by recognising that the need to end all discrimination against women and girls also requires tailoring mechanisms to access to justice to ensure that they are equally accessible to girls.

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

It is not possible to fully address every relevant aspect of access to justice for children in this short submission, but this section will focus on some of the particular issues affecting children with regards to access to justice arranged under the headings included in the call for information. For more information, please see CRIN’s global research on access to justice for children,⁶ 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.*⁷

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.

Children can face a number of forms of discrimination in attempting to access justice. Around the world legal systems commonly institute strict age based rules that require

³ 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, para. 6, available at: http://www2.ohchr.org/english/bodies/crc/docs/GC5_en.doc.

⁴ 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. 33.

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

⁷ Available at: www.crin.org/node/42383.

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.

In many jurisdictions, this barrier can be compounded by rules requiring parental consent for a child to make a complaint. The more restrictive rules in this area commonly exacerbate age discrimination with the addition of gender discrimination, by requiring that the power to initiate legal proceedings be strictly vested in a child's father or grandfather.⁸ 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 prosecutor⁹ or requiring parental consent to lodge a complaint¹⁰ can create substantial barriers to children, particularly where their parents may be responsible for rights violations.

Investing in children

No one should be prevented from seeking access to justice because of an inability to finance their case out of pocket, but 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, therefore, 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.¹¹

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.¹² Typically, eligibility criteria relating to the financial status of applicants will limit the coverage of legal aid. It is common for these rules to take into account the financial situation of a child's parents, provisions that may prevent children from approaching the

⁸ See Algeria Family Code, Articles 81 and 82; Kuwait Personal Status Law, Article 209; United Arab Emirates Personal Status Code 2005, Articles 32 and 34; Qatar Law No. 40 of 2004 on the Guardianship Over Minors' Funds, Article 4.

⁹ See for example, Thailand Civil and Commercial Code, Section 1562.

¹⁰ 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.

¹¹ 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.

¹² For full details see CRIN, *Access to justice for children: Belgium*, 23 April 2015, available at: www.crin.org/node/41373.

courts when they do not enjoy the support of their parents. There are, however, exceptions excluding parental income entirely from decisions on whether to grant legal aid to a child, or excluding parental income where parents are not assisting their child in bringing a case.¹³

Investing in legal aid and legal assistance for children is key to ensuring that justice is accessible.

Accountability and monitoring

Recognising access to justice as a crosscutting goal that enables the realisation of the other goals also presents the opportunity to enhance the accountability and monitoring with regards to these goals. 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 to 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.

Violence against children

Goal 16.2: "End abuse, exploitation, trafficking and all forms of violence and torture of children"

Goal 5.2: Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation."

Goal 5.3: "Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation."

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. The UN's violence study remains the canonical international resource on violence against children, setting out detailed recommendations for the elimination of all forms of violence against children.¹⁴ The core approach at the heart of the study was that no violence against children is justifiable; all violence against children is preventable.¹⁵ While goal 16.2 singles

¹³ For example, Finland. For further information on the granting of legal aid in Finland, refer to the website of the legal aid office at <http://www.oikeus.fi>.

¹⁴ 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/>.

¹⁵ *Ibid.* at p. 6.

out specific forms of violence - namely abuse, exploitation, trafficking and torture - it also explicitly calls for an end to “all forms of violence” against children. For this goal to be realised, it must target all forms of violence in all settings 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

Recommendations

In preparing the forthcoming report, we urge OHCHR to specifically address the following issues:

1. Recognise that access to justice is a fundamental requirement that underlies all of the Sustainable Development Goals;
2. Adopt the recommendations of the UN Study on Violence Against Children in setting out goals and the approach to eliminating violence against children as part of the Sustainable Development Goals.