



## **Submission from Aoife Nolan, Professor of International Human Rights Law and Co-Director of the Human Rights Law Centre, University of Nottingham<sup>1</sup>**

### Introduction

This contribution will focus on the lack of reference to child rights in the context of the global response to the economic fall-out of COVID-19, specifically with regard to economic policy. **How can we ensure that children's rights shape, and are advanced by, the economic policymaking central to ensuring a 'sustainable and resilient recovery from the COVID-19 pandemic'?**

### The Invisibility of Children and Their Rights in COVID-19-related Economic Policymaking

THE Secretary General's [Policy Brief](#) on the impact of COVID-19 on children identified multiple dimensions to COVID-19's impact on the children, namely: 1) falling into poverty; 2) learning; 3) survival and health; and 4) safety. These risks constitute a threat to children's rights enjoyment of a wide range of their rights under international human rights law, particularly the UN Convention on the Rights of the Child (UNCRC).<sup>2</sup> They also pose a significant threat to progress in relation to the achievement of the Sustainable Development Goals.<sup>3</sup> Economic policy has a key role to play in terms of national and supranational efforts to address those risks. However, **COVID-19 has made clear the ongoing invisibility of children and their rights when it comes to domestic and supranational economic policy.**

While there has been extensive discussion of children and their rights on the part of UN and other actors in the context of COVID-19 and state responses thereto, **children's rights have not played a central part in discussions around appropriate economic policy responses to the fall-out of the pandemic.** For instance, in the Secretary General's [Policy Brief on the impact of COVID-19 on children](#), there is extensive reference to the socioeconomic impacts of the crisis on children, as well as an emphasis on the need to provide specific programmes and assistance to children. There is, however, no discussion of how **children's rights should serve as a framework for COVID-19-related economic policy decision-making that will play a key role in addressing and mitigating those socio-economic impacts.**

This silence on the role of **human (including child) rights as a framework for the processes, inputs, outputs and outcomes of economic policy-decision-making** is also evident in wider UN responses to COVID-19. One telling example is the [UN framework for the immediate socio-economic response to COVID-19](#).<sup>4</sup> This document, which 'sets out the framework for the

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<sup>2</sup> While such impacts affect a wide range of rights, those of central concern include Right to a standard of living adequate for the child's development, including adequate housing & food (Article 27 UNCRC); right to freedom from all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment and exploitation (Article 19 UNCRC); the right to the highest attainable standard of health (article 24); the right to life, survival and development (Article 6);

<sup>3</sup> While such impacts affect a wide range of SDGs, see in particular, Goals 1, 2, 3, 4, 5, 10, 11 and 16.

<sup>4</sup> United Nations, 'A UN Framework for the Immediate Socio-Economic Response to COVID-19', April 2020, [https://www.un.org/sites/un2.un.org/files/un\\_framework\\_report\\_on\\_covid-19.pdf](https://www.un.org/sites/un2.un.org/files/un_framework_report_on_covid-19.pdf)

United Nations' urgent socio-economic support to countries and societies in the face of COVID-19',<sup>5</sup> makes frequent and explicit reference to human rights. It also addresses the position of children as an 'at-risk population experiencing the highest degree of socioeconomic marginalization and requiring specific attention' in the UN Development System'.<sup>6</sup> In doing so, it outlines a range of measures that should be taken to support and ensure social protection for children, including extending and scaling-up cash transfers, food assistance programmes, social insurance programmes and child benefits to support families.<sup>7</sup> It also highlights the importance of measures to support education and social services.<sup>8</sup>

However, consistent with a more **general tendency of policymaker engagement with human rights to dissipate when recovery discussions hone in on economic policy**, the section on 'guiding the necessary surge in fiscal and financial stimulus to make macroeconomic policies work for the most vulnerable and strengthening multilateral and regional responses' makes no mention of human rights.<sup>9</sup> This is notwithstanding references to the need to ensure support for vulnerable groups (including children), as well as emphasis on the necessity of supporting SDG achievement and ensuring 'social and environmental sustainability within the framework of the 2030 Agenda and the SDGs'.<sup>10</sup> In the same section, the improvement of the evidence base for policy-making (including gender analysis) as well as the 'conduct of comprehensive impact assessments at the household level, and to undertake context-specific socio-economic impact analyses of the crisis'<sup>11</sup> are identified as areas of priority action. There is, however, no reference to human and/or child rights impact assessment.

That is despite the clear acknowledgement of the implications of COVID-19 and states responses thereto for human (including child) rights evident elsewhere in the document. This is reflected in, amongst others things, an annexe outlining indicators for monitoring the human rights implications of COVID-19, as well as a statement in the 'How We Will Deliver the Response' section that,

the human rights implications of the pandemic call on the [UN Development System] to be proactive in ensuring that its efforts, as well as the local, national and international efforts it supports, address human rights concerns and advance human rights in the 'recover better' phase, as framed by the Secretary-General. To this end, with support and guidance from OHCHR, the UNDS will continue to assess the human rights impact of the COVID-19 pandemic and the extent to which responses respect human rights by using the 10 human rights indicators.<sup>12</sup>

This is a far cry, however, from asserting that such impact assessment (or child rights impact assessment) should form part of the efforts of national government and other actors with central roles to play in the economic policy context. Nor do any of the indicators set out relate to economic policy.

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<sup>5</sup> Ibid, p.1.

<sup>6</sup> Ibid, p.7.

<sup>7</sup> Ibid, p.13.

<sup>8</sup> Ibid, p. 15.

<sup>9</sup> Ibid, IV.4. This and the next two paragraphs are drawn from A. Nolan & J. Bohoslavsky, '[Human Rights and Economic Policy Reforms](#)' (2020) 9(2) *International Journal of Human Rights* 1247-1267.

<sup>10</sup> Ibid, p.23 (vulnerable groups) and p.24 (SDGs achievement).

<sup>11</sup> Ibid, p.27.

<sup>12</sup> Ibid, p.33

It should be noted, further, that **a focus on SDG achievement in economic policy responses to COVID-19 will not compensate for a failure to take adequate account of children’s rights.** The SDGs and children’s rights are not identical – in terms of content, normative status, implementing actors and monitoring mechanism. The SDGs should, if implemented effectively, result in actions and the mobilisation of institutions and resources which will contribute to outcomes that advance children’s rights enjoyment in a range of areas. However, **SDG implementation, monitoring and accountability processes will not be automatically child-centred or child rights-compliant.**<sup>13</sup> As such, an exclusive or dominant focus on SDG achievement, rather than child rights realisation, in post-COVID-19-related recovery plans may well have significantly negative implications for the ability of such plans to advance child rights enjoyment. This is particular so given concerns raised by different commentators about the role that is envisaged for the Global Partnership for Sustainable Development (which includes non-state business and IFI actors that are largely ‘uncaptured’ by international child rights law) in terms of SDG implementation. Furthermore, the SDGs associated financing model<sup>14</sup> have been criticised for doing little to change ‘the broader policy ecosystem that perpetuates poverty and increases inequality’<sup>15</sup> – something that bodes poorly for that model to deliver on child rights. **An economic policy response to COVID-19 that is predominantly conceptualised or framed in SDG terms, risks side-lining children’s rights and their associated burdens of obligation and accountability.**

More positively, July 2020 saw the production of a ‘Checklist for a Human Rights-Based Approach to Socio-Economic Country Responses to COVID-19’ by the OHCHR, the UN Development Programme and the UN Sustainable Development Group.<sup>16</sup> The Checklist includes a section on ‘macroeconomic response and multilateral collaboration’.<sup>17</sup> Amongst other things, the Checklist asks whether stimulus packages have ‘been developed and assessed with a human rights lens’ and whether country analyses and strategies in relation to debt distress and sustainability incorporate HRIAs. It also includes questions focused on ‘maximum available resources’ and ‘retrogression’, as well as whether measures are in place ‘to ensure IFIs and donors refrain from attaching conditions to their financing that could undermine the state’s ability to respect, protect, and fulfil its human rights obligations in the allocation of resources and the design of policies’. Admittedly, the document proposes a rather simplistic yes/no assessment approach. However, such **HRIA can – and should – be developed further in line with more sophisticated and comprehensive human rights impact assessment methodology, such as that envisaged in the *Guiding Principles on Human Rights Impact Assessment of Economic Reforms*.**<sup>18</sup>

#### An ‘SDG approach’ will Not Be Enough for Children

It should be noted that **a focus on SDG achievement alone in economic policy responses to COVID-19 will not compensate for a failure to take adequate account of children’s rights.**

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<sup>13</sup> For more, see A. Nolan, ‘Poverty and Child Rights’ in Todres & King (eds), *Oxford Handbook of Children’s Rights* (New York: OUP, 2020), Chapter 20.

<sup>14</sup> UN (2015). ‘The Addis Ababa Agenda of the Third International Conference on Financing for Development’, New York, UN.

<sup>15</sup> CESR, ‘Two Years On: Can Human Rights Save the 2030 Agenda?’ (15 Feb. 2018), <http://www.cesr.org/two-years-can-human-rights-rescue-2030-agenda>.

<sup>16</sup> OHCHR, UNDP and UNSDG, ‘Checklist for a Human Rights-Based Approach to Socio-Economic Country Responses to COVID-19’, July 2020, [https://www.ohchr.org/Documents/Events/COVID-19/Checklist\\_HR-Based\\_Approach\\_Socio-Economic\\_Country\\_Responses\\_COVID-19.pdf](https://www.ohchr.org/Documents/Events/COVID-19/Checklist_HR-Based_Approach_Socio-Economic_Country_Responses_COVID-19.pdf).

<sup>17</sup> Ibid, p.17.

<sup>18</sup> UN Doc. A/HRC/40/57 (18 December 2020). This paragraph is drawn from [Nolan & Bohoslavsky](#).

The SDGs and children’s rights are not identical, whether in terms of content, normative status, implementing actors and monitoring mechanisms. The SDGs should, if implemented effectively, result in actions and the mobilisation of institutions and resources which will contribute to outcomes that advance children’s rights enjoyment in a range of areas.<sup>19</sup> However, **SDG implementation, monitoring and accountability processes will not be automatically child-centred or child rights-compliant.**<sup>20</sup> As such, an exclusive or dominant focus on SDG achievement, rather than child rights realisation, in post-COVID-19-related recovery plans may well have significantly negative implications for the ability of such plans to advance child rights enjoyment. This is particularly so given concerns raised by different commentators about the role that is envisaged for the Global Partnership for Sustainable Development (which includes non-state business and IFI actors that are largely ‘uncaptured’ by international child rights standards)<sup>21</sup> in terms of SDG implementation. Furthermore, the SDGs associated financing model<sup>22</sup> has been criticised for doing little to change ‘the broader policy ecosystem that perpetuates poverty and increases inequality’<sup>23</sup> – something that bodes poorly in terms of that model delivering for child rights. Crucially, **an economic policy response to COVID-19 that is predominantly conceptualised or framed in SDG terms, risks side-lining children’s rights and their associated burdens of obligation and accountability.**

### Bringing Child Rights to Bear on COVID-19-related Economic Policy

The need to integrate children’s rights into economic recovery plans has been acknowledged by key actors working on COVID-19 and children. In its April 2020 [COVID-19 Statement](#), the **UN Committee on the Rights of the Child called on states to consider the economic impacts of the pandemic on the rights of the child.**<sup>24</sup> It stated that States should ensure that responses to the pandemic, including restrictions and decisions on allocation of resources, reflect the principle of the best interests of the child. In its [A Six Point Plan for the Future of Our Children](#), UNICEF asks governments to ‘marshal global resources to ensure an inclusive, gender-sensitive recovery, and support national fiscal responses that prioritize children and their families’. Focusing on budgets (a key element of economic policy), [OHCHR](#) calls for a child rights perspective in budgeting processes, including ‘targeted investment strategies to reach all children and prioritizing those furthest behind, specific allocations to children in all relevant sectors, dedicated indicators and a tracking system to monitor and evaluate the distribution of resources’.<sup>25</sup>

**At this point, there is extensive research and practice with regard to the role that child rights can and should play with regard to economic policy, including public budgets and**

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<sup>19</sup> See, e.g., UN Committee on the Rights of the Child, ‘[Contribution to the 2030 Agenda for Sustainable Development in response to a call for inputs by the High-Level Political Forum on Sustainable Development](#)’ (March 2019).

<sup>20</sup> For more, see A. Nolan, ‘Poverty and Child Rights’ in Todres & King (eds), *Oxford Handbook of Children’s Rights* (New York: OUP, 2020), Chapter 20.

<sup>21</sup> See, e.g., UN Committee on the Rights of the Child, [General Comment 16 on state obligations regarding the impact of business on child rights](#), UN Doc. CRC/C/GC/16 (2013).

<sup>22</sup> UN (2015). ‘The Addis Ababa Agenda of the Third International Conference on Financing for Development’, New York, UN.

<sup>23</sup> CESR, ‘Two Years On: Can Human Rights Save the 2030 Agenda?’ (15 Feb. 2018), <http://www.cesr.org/two-years-can-human-rights-rescue-2030-agenda>.

<sup>24</sup> UN Committee on the Rights of the Child, ‘COVID-19 Statement’ (8 April 2020).

<sup>25</sup> OHCHR, [Child Rights and the 2030 Agenda for Sustainable Development Accelerated action and transformative pathways](#): realizing the decade of action and delivery for sustainable development (2020).

**resource allocation.**<sup>26</sup> Some of this has been **conceptual, developing understanding of the scope of child rights obligations from an economic policy-making perspective.**<sup>27</sup> Some of it has been **methodological, focusing on the development of tools to bring children’s rights to bear on economic policy.**<sup>28</sup> This latter body of work includes practice focused on ensuring child participation in budgetary decision affecting them<sup>29</sup> - experience that will need to be borne in mind but significantly developed by those seeking to secure children’s right to be heard in the context of COVID-19-related economic policy formulation, implementation and review, especially when looking beyond the national budget context.

A key element of methodology-oriented efforts has been the development of **child rights impact assessment** methodologies.<sup>30</sup> The UN Committee has made clear that ‘States parties should conduct child rights impact assessments of all legislation, policies and programmes, including those of a macroeconomic and fiscal nature, in order to ensure that they do not undermine the realization of children’s rights’.<sup>31</sup> There is a growing body of CRIA and other effortswork involving child rights analyses of economic policymaking on the part of NHRIs, academics, and think tanks.<sup>32</sup> **This experience, together with broader work around *ex ante* and *ex post* HRIA of economic policy decision-making involving states and non-state actors (e.g., IFIs, lenders and donors) can and should be harnessed in bring child rights to bear to ensure a ‘sustainable and resilient recovery from the COVID-19 pandemic’.**<sup>33</sup>

## Conclusion

Children’s rights have a key role to play in steering economic policy, as well as rights-based, inclusive, equitable and sustainable development. A COVID-19 economic response that does not recognise this will undermine both children’s rights and achievement of the 2030 Agenda for Sustainable Development. In turn, this will inevitably result in children being left behind in any COVID-19 recovery.

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<sup>26</sup> For an overview of this body of work, see [Nolan & Bohoslavsky](#).

<sup>27</sup> UN Committee on the Rights of the Child [General Comment No.19 on public budgeting for the realisation of children’s rights](#) (Article 4), UN Doc. UN/CRC/GC/19 (2016); A. Nolan, ‘Children’s Economic and Social Rights’ in Liefwaard et al (eds), *International Law on the Rights of the Child* (Switzerland: Springer, 2018), 239-258; A. Nolan, ‘Economic and Social Rights, Budgets and the Convention on the Rights of the Child’ (2013) 21(2) *International Journal of Children’s Rights* 248-277.

<sup>28</sup> See, e.g., S. Hoffman, ‘Ex ante children’s rights impact assessment of economic policy’ (2020) 9 *International Journal of Human Rights* 1333-1352

<sup>29</sup> See, e.g., Marshall et al, ‘Child participatory Budgeting: A Review of Global Practice (2016).

<sup>30</sup> Child rights impact assessment can be understood as ‘predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights’. (Adapted from UN Committee on the Rights of the Child, [General Comment No.5 on general measures of implementation](#), UN Doc. CRC/GC/2003/5 (2003) para 45).

<sup>31</sup> [General Comment No.19 on public budgeting for the realisation of children’s rights](#) (Article 4), UN Doc. UN/CRC/GC/19 (2016), para 71.

<sup>32</sup> For more, see S. Hoffman, ‘Ex ante children’s rights impact assessment of economic policy’ (2020) 9 *International Journal of Human Rights* 1333-1352. A useful example of post facto CRIA of economic policy decisions are included in Reed et al, ‘An Adequate Standard of Living: A Child Rights Based Quantitative Analysis of Budgetary Decisions 2010–13: Final Report’ (London: Office of the Children’s Commission for England, 2013) and) and Office of the Children’s Commissioner, ‘[An Adequate Standard of Living: A child-rights-based quantitative analysis of tax and social security policy changes in the Autumn Statement 2013 and the Budget 2014](#)’ (London: 2014). There is growing work being carried out in this area in Latin America and Africa by groups including [ACIJ](#) and the [African Child Policy Forum](#).

<sup>33</sup> For more on this work, including the key guidance set out in the [Guiding Principles on Human Rights Impact Assessment of Economic Reforms](#), see [Nolan & Bohoslavsky](#).