

Submission to Call for Inputs on the Protection of the Rights of the Child and 2030 Agenda for Sustainable Development

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This submission will primarily focus on question 2 in the call for inputs: ‘What approaches to implementing the 2030 Agenda would ensure the protection of the rights of all children, and that no child is left behind?’

Introduction and General Concerns

The 2030 Agenda is explicitly grounded in the Universal Declaration of Human Right and international human rights treaties,¹ with the General Assembly Resolution providing for the adoption of the SDGs stating that: ‘we [world leaders] reaffirm our commitment to international law and emphasize that the Agenda is to be implemented in a manner that is consistent with the rights and obligations of States under international law.’² This clearly includes the UN Convention on the Rights of the Child (CRC) - which is also explicitly cited as a key standard to be taken into account in fostering ‘a dynamic and well-functioning business sector’.³ The integration of human rights language into Agenda 2030 was welcomed by States and civil society concerned to address concerns about the MDGs’ ‘human rights-blindness’ and accountability shortcomings. Indeed, the introduction of human rights language was a key value-added element of the Sustainable Development Goals (SDGs) vis-à-vis the Millennium Development Goals (MDGs), contributing importantly to the SDGs in terms of providing a stronger accountability focus and linking sustainable development processes with legally binding obligations under international law centred on human dignity. Given all this, It is deeply regrettable that the implementation of Agenda 2030 for Sustainable Development thus far has failed to give adequate effect to (or even reflect a proper understanding of) children’s rights. The OHCHR’s report is a key opportunity to raise this issue and to suggest how it might be addressed as the implementation of Agenda 2030 moves forward. Given the crucial stage we are at in terms of establishing the key objectives and parameters for Agenda 2030 action, it is vital that the OHCHR call for all implementation, monitoring and accountability processes related to Agenda 2030 to be child rights-compliant and child rights-proofed.

What Is Required by the CRC?

There are a range of steps that must be taken in relation to the implementation of Agenda 2030 (at the international, regional and national levels) if it is to be given effect to in a way that is compliant with States’ obligations under the CRC.⁴ In statements such as its General Comment No.5 on general measures of implementation of the UN CRC,⁵ the Committee on the Rights of the Child has made clear the standards that

¹ General Assembly, ResIn A/Res/70/1, para 10.

² Ibid para 18.

³ Ibid, para 57,

⁴ At the time of writing, the only UN member state that is not a State Party to the CRC is the United States.

⁵ (2003) UN Doc, CRC/GC/2003/527.

are required of States when giving effect to the CRC. These requirements also apply to state efforts (whether unilateral or in collaboration with others) to give effect to Agenda 2030. Their implications for Agenda 2030 implementation include: rooting national strategies and programming for the achievement of the SDGs in the Convention; ensuring that business and other private sector actors do not contravene children's rights in the context of their efforts to advance Agenda 2030;⁶ ensuring that the best interests of the child are a primary consideration in all actions concerning children related to the SDGs;⁷ building into government at all levels a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation related to Agenda 2030 which affects children and the enjoyment of their rights)⁸ and child impact evaluation (evaluating the actual impact of implementation);⁹ all state investment related to the SDGs should be consistent with the guidelines set out in the Committee on the Rights of the Child's General Comment No.19 on public budgeting for the realisation of children's rights.¹⁰

Child rights under the CRC do not just have implications for state action in the national context; the Committee on the Rights of the Child has made clear that

in their promotion of international cooperation and technical assistance [of which the SDGs are a key element], all United Nations and United Nations-related agencies should be guided by the Convention and should mainstream children's rights throughout their activities. They should seek to ensure within their influence that international cooperation is targeted at supporting States to fulfil their obligations under the Convention. Similarly the World Bank Group, the International Monetary Fund and World Trade Organization should ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the Convention.¹¹

Key partnerships for implementation in terms of Agenda 2030 will entail state engagement with business and other private actors. All such engagement must be in conformity with a child rights approach.¹² Where a state is engaged with international development, finance or trade organisations, it must take all reasonable actions and measures to ensure that such organisations act in accordance with the CRC thereto in their decision-making and operations, as well as when entering into agreements or establishing guidelines relevant to the business sector.¹³ Overall, it is crucial to note that States retain their obligations in the field of development cooperation and must ensure that cooperation policies and programmes are designed and implemented in compliance with the CRC.¹⁴ This must be borne in mind in terms of the development of

⁶ Ibid, paras 42-44.

⁷ Article 3(1) CRC.

⁸ General Comment No.5, para 45.

⁹ Ibid para 45.

¹⁰ (2016) UN Doc. CRC/GC/C/19.

¹¹ General Comment No.5, para 64.

¹² Committee on the Rights of the Child, General Comment 16 on state obligations regarding the impact of business on children's rights (2013) UN Doc. CRC/GC/C/16, para 12.

¹³ General Comment 16, para 48.

¹⁴ General Comment 16, para 47.

financing approaches in relation to Agenda 2030, both those emanating from the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and otherwise.

At this point there is extremely limited evidence that States are complying with these requirements either in terms of their domestic efforts in relation to Agenda 2030 or with in their activities with regard to developing regional or global implementation, monitoring and accountability processes. Such compliance will not simply ‘happen’ – States must take a proactive, deliberate approach to ensure that their national, regional and global work in relation to Agenda 2030 is conceptualised and assessed in terms of children’s rights under the CRC.

Some Specific Challenges in relation to Current Approaches to Implementing the 2030 Agenda from the Perspective of Protecting the Rights of All children

This section will focus on a selection of the global indicators contained in the Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators.¹⁵

The Right of the Child to Be Heard

The voice of the child is a particularly glaring omission from existing plans for implementation, monitoring and accountability. Article 12 of the UN Convention on the Rights of the Child provides for the child’s right to be heard in all matters affecting them – this requirement applies directly to all processes around Agenda 2030, whether related to implementation, accountability or monitoring. There is no point stating (as Agenda 2030 does) that ‘children and young women and men are critical agents of change and will find in the new Goals a platform to channel their infinite capacities for activism into the creation of a better world’¹⁶ if in practice their views are ignored in the key processes related to the SDGs.

The failure thus far to ensure child participation in the process for determining global indicators is striking. This omission also applies to elements of the SDGs with particular significance for child rights.¹⁷ It is particularly disturbing from the perspective of Article 12(1) of the Convention on the Rights of the Child that one of the two indicators for Goal 16.7 set out in the March 2016 Report of the Inter-Agency and

¹⁵ UN Doc,E/CN.3/2016/2/Rev.1, Annex IV.

¹⁶ Agenda 2030, para 50.

¹⁷ Goals with specific relevance to children include Goal 1.2 on reducing at least by half the proportion of children living in poverty; Goal 2.2 on ending malnutrition achieving, by 2025, the internationally agreed targets on stunting and wasting in children under 5 years of age and addressing the nutritional needs of adolescent girls, pregnant; Goal 3.2 on ending preventable deaths of newborns and children under 5 years of age; Goals 4.1, 4.2, 4.5, 4.7, 4a and 4b on ensuring inclusive and equitable quality education and promote lifelong learning opportunities for all; Goal 5.1-5.4, 5.6 and 5c on achieving gender equality and the empowerment of all women and girls; Goal 6.2 on achieving access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations; Goal 8.7 on immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms; Goal 11 on making cities and human settlements inclusive, safe, resilient and sustainable; Goals 16.1, 16.2, 16.7 and 16.9

Expert Group on Sustainable Development Goal Indicators¹⁸ on ensuring ‘responsive, inclusive, participatory and representative decision-making at all levels’ does not include children at all, rather focusing on ‘proportions of positions (by sex, age, persons with disabilities and population groups) in public institutions (national and local legislatures, public service, and judiciary) compared to national distributions’. Given that children are not included in the named public institutions, this indicator entirely fails to capture their position vis-à-vis decision-making. While indicator 16.7.2 will measure the ‘proportion of population who believe decisionmaking is inclusive and responsive, by sex, age, disability and population group’, it is unclear whether this will involve engaging with children. More generally, the heavy emphasis on quantitative rather than qualitative indicators in the current draft global indicators further undermines the likelihood that children’s lived experiences and participation rights will be ensured in Agenda implementation, monitoring and accountability processes.

The Child’s Right to Education

It is also notable that the draft global indicators on the right to education fail to capture key elements of the child’s right to education.¹⁹ It should be acknowledged that the overall language of SDG4 is consistent with a rights perspective in so far as it stresses universal access to quality lifelong learning. Moreover, some process and structural indicators have been introduced through the sector-specific indicator development process, reflecting rights-based critiques of early draft indicators.²⁰ However, these improved thematic indicators do not have the same status as the global indicators and the weaknesses in the draft global indicators in rights terms are the appropriate focus here.

First, the targets and indicators are potentially narrower than the overall goal in defining coverage in terms of population and conceptualisation of what constitutes quality education. Quality education in target 4.1 is reduced to meeting minimum proficiency levels in reading and mathematics at grade 2/3, end of primary and end of secondary. This is problematic in three ways. First, it reduces the implicit commitment of the target by excluding upper secondary education – a key element of education as conceptualised under Article 28(1)(b) CRC. Second, it limits the breadth of education quality to reading and mathematics, which goes against the accepted understanding of “education” as contained in international rights frameworks which entail that education ‘in all its forms and at all levels’ should exhibit availability, accessibility acceptability and adaptability.²¹ Understandings of ‘inclusive’, ‘equitable’ and ‘quality’ education (and the indicators for monitoring such) need to be underpinned by these concepts. Third, it implies that what counts as acceptable levels of learning outcomes will be defined subsequently by experts rather than being a matter for democratic scrutiny. Given that even very low thresholds of achieved learning are not being met by the vast

¹⁸ UN Doc. E/CN.3/2016/2/Rev.1.

¹⁹ For an outline of what should be captured in a ‘right to education’ framework for indicators of SDG4, see Right to Education Project, ‘Applying Right to Education Indicators to the post-2015 Framework’ (January 2015), http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Applying_RTE_Indicators_to_the_Post_2015_Agenda_2015.pdf.

²⁰ See <http://www.uis.unesco.org/Education/Documents/meeting%20of%20the%20sdg4-education2030-steering-committee-may2016.pdf> for the May 2016 version of these education indicators.

²¹ See Committee on Economic, Social and Cultural Rights, General Comment No.13 on the right to education (article 13) (1999), UN Doc. E/C.12/1999/10.

majority of learners in most developing countries, the risk is considerable that a very low threshold will be set that may have implications for enjoyment of the right to education. Even the minimum core of education as identified by the Committee on Economic, Social and Cultural Rights goes beyond what is contained in indicator 4.1.²² Furthermore, whilst the target explicitly uses the adjective “free”, none of the indicators address this key element of the right to education. Thus, target 4.1 does not appear fit for the purpose of realising the right to education.

More generally, the focus on outcome indicators and the dearth of structural and procedural indicators means that key issues related to evaluating the obligation of States to progressively realise the right to education are not captured adequately by the indicators – this is despite the centrality of that obligation to the right to education in terms of Article 4 CRC.

Beyond indicator 4.1 other indicators also fail to reflect the established approach of assessing education in terms of availability, accessibility, acceptability and adaptability. In particular, there is little sense across indicators 4.1-4.c.1 of notions of acceptability and adaptability. An exception to this is Target 4a which commits to “Build and upgrade facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all” and indicator 4.a.1, which captures some elements of availability and accessibility, including single-sex basic sanitation facilities and adapted infrastructure and materials for students with disabilities.

Target 4.7 does move towards rights concerns in potentially important ways, with a focus on knowledge and skills for sustainable development. Consistent with the aims of Article 29 CRC, Indicator 4.7.1 proposes to measure the “extent to which ... gender equality and human rights are mainstreamed in (a) national policies, (b) curricula, (c) teacher education and (d) student assessment”. Whilst this is only a partial response to rights imperatives regarding the content of education (which are outlined in Articles 28 and 29 CRC), it is to be welcomed. However, the intended processes of measuring this appear much less certain than many of the draft indicators and it will be important to inform measurement decisions from a rights-based perspective.

Across the draft education indicators and the envisaged process, there is a severe risks that levels of accountability and democratic participation will continue to be undermined, as in the MDG process. Despite longstanding critiques of indicator-setting processes, the discussion about indicators is a highly-closed and technical one, from which children’s rights activists, academics and officials are excluded, let alone children, learners, parents and communities. Rights-based indicators need to balance quantitative and qualitative elements and national and international dimensions but the global process is currently focused narrowly on what can be measured comparatively.

²² See Committee on Economic, Social and Cultural Rights, General Comment No.13 on the right to education (article 13) (1999), UN Doc. E/C.12/1999/10, para 57. While this statement was made by the Committee on Economic, Social and Cultural Rights in the context of Article 13 ICESCR, the similarity in terms of phraseology of Article 13 ICESCR and Article 28 CRC as well as the willingness of the Committee on the Rights of the Child to look to the statements of the Committee on Economic, Social and Cultural Rights when dealing with economic, social and cultural rights makes it appropriate to look to that body’s views here.