

## ***COVID-19 and the impact on children's rights: the imperative for a human rights-based approach***

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### UNICEF is committed to child rights



*"UNICEF is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children" (UNICEF Mission).*

UNICEF HQ, Regional Offices, country offices and National Committees have an important and inspiring leadership role to play in championing and defending child rights, not only during the current emergency phase of COVID-19, but also during subsequent reconstruction efforts. UNICEF can support and empower rights-holders and duty-bearers to both "respond now" and "build back better" with a child rights approach. All UNICEF personnel are encouraged to apply a child rights approach in whatever sphere of influence they operate, as a framework to underpin all the other sector-specific COVID-19 guidance being issued by the organisation.

A child rights approach:

- furthers the realisation of child rights;
- uses child rights standards and principles to guide behaviour, actions, policies and programmes (with a focus on non-discrimination, best interests of the child, right to life, survival and development, respect for children's views, and family and community guidance as children develop); and
- builds the capacity of children as rights-holders to claim their rights and the capacity of duty-bearers to fulfil their obligations to children.

Child rights approach guiding questions have been developed to help stakeholders consider how to apply the child rights approach in practice.

### COVID-19 and government responses impact on the *full range of children's rights – social, economic, cultural, civil and political*

The Convention on the Rights of the Child applies to all children under 18 in all contexts, including in emergency situations, and governments are obliged to respect, protect and fulfill these rights of all children. UNICEF has an important role both to promote and to monitor implementation of the Convention.

COVID-19, and the measures taken by governments to prevent, contain and treat the disease, impact directly and indirectly on the full range of child rights as set out in the Convention: social, economic, cultural, civil and political rights. UNICEF is developing a series of issue briefs, guidance and technical notes elaborating on the consequences for various child rights. These documents can be accessed at the end of this paper. Extreme pressure on the provision of basic services has resulted in an initial focus on economic and social rights – including the rights to health, including water and sanitation information and facilities and food, education, and protection from violence, abuse and exploitation.



Not covered explicitly in all of the sectoral papers but of equal importance is the impact on children's civil and political rights, including freedom of expression; thought, conscience and religion; association and peaceful assembly; privacy; and information. While these rights might seem less important in a public health crisis such as the current one, along with cultural rights (such as the right to rest, play, culture and the arts), they are just as legally binding to CRC States Parties and necessary to children's ability to exercise other rights. Rights are indivisible, interconnected, interdependent and none can be sacrificed in the name of others.

This is reflected in the need for integrated, multi-sectoral responses to COVID-19. A positive example of this is [Portugal giving migrants and asylum-seekers citizenship rights](#) during the COVID-19 outbreak granting them full access to the country's healthcare system.

The need for a comprehensive approach can feel overwhelming. Practical starting points - such as the guiding questions for the child rights approach, and child rights impact assessments - can provide concrete entry points.

### **Any response to the pandemic, including limitations or derogations to human rights and child rights, must comply with international law**

In responding to the COVID-19 crisis governments may, legally, limit certain rights, under the strict conditions of legality, necessity, proportionality and non-discrimination. Many governments around the world – in some cases not abiding to these conditions – have already enacted legislation limiting rights such as freedom of association and peaceful assembly, privacy (through increased surveillance), and individual freedom of movement. This has a profound impact on the rights, well-being and protection of children.

The rule of law continues to apply during the pandemic and any response must comply with international human rights, humanitarian, and refugee laws.

Whilst measures suspending rights should be avoided when the situation can be adequately dealt with by establishing proportionate restrictions or limitations on certain rights, Governments may declare a state of emergency to protect the general interest of its population, under specific situations of emergency that "threaten the life of the nation".<sup>1</sup> This includes situations of public health emergencies, such as in the case of the COVID-19 pandemic. Under a state of emergency, States may suspend or "derogate" temporarily from certain rights, under certain conditions. These conditions are that derogations must be:

- provided by law;
- strictly temporary in scope;
- the least intrusive to achieve the stated public health goals;

- proportionate and limited to those strictly required by the exigencies of the situation <sup>1</sup>;
- not discriminatory in application;
- and subject to effective judiciary and parliamentary review;
- and include safeguards such as sunset or review clauses, in order to ensure return to ordinary laws as soon as the emergency situation is over

Moreover, [States Parties to the International Covenant on Civil and Political Rights](#) that choose to derogate from certain rights must publicly proclaim the state of emergency and immediately inform the other States Parties, through the UN Secretary-General, of the provisions from which it has derogated and of the reasons why. A further communication must be made, also through the SG, on the date on which it terminates such derogation<sup>2</sup>. Such public proclamations are critically important as they allow and indicate the necessity of independent monitoring of the legality, proportionality, duration of restrictions, and impact on human rights.

Some of the civil and political rights are non-derogable<sup>3</sup>. This means that they may not be limited under any circumstances, including during situations of emergency, or for any human being, including children. These non-derogable rights include, but are not limited to, the right to life; prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent; and freedom of thought, conscience and religion. The right to a remedy also cannot be suspended in situations of emergency. Children (and adults of their behalf) who believe that their rights are violated should be able, and be supported, to claim redress.

While derogation is allowed for some civil and political rights in states of emergency – provided the conditions above are respected – economic, social and cultural rights cannot be fully suspended and States are bound by a core obligation to ensure minimum essential levels of each of the rights, including: essential primary health care; minimum essential food which is sufficient, nutritionally adequate and safe; essential basic shelter and housing, including sanitation; the right not to be arbitrarily evicted from one's house; and access to the minimum essential amount of water to prevent disease<sup>4</sup>.

Therefore, restrictions to respond to the virus must be motivated by legitimate health goals, be guided by human rights and child rights standards and principles, and must not be used as a basis to target particular groups, minorities, or individuals. It is critical that such restrictions should not function as a cover for repressive action under the guise of protecting health, nor should they be used to quash the work of human rights and child rights defenders<sup>5</sup>.

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<sup>1</sup> This requirement relates to the duration, geographical coverage and material scope of the state of emergency. Strict proportionality also means that the derogation or limitation of rights should only apply to those specific rights which must be limited in order to deal with the emergency, and that the limitation should only apply to the extent absolutely required.

<sup>2</sup> ICCPR, Article 4.3, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>; and Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1984), <https://www.refworld.org/docid/4672bc122.html>

<sup>3</sup> ICCPR, article 4.2, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

<sup>4</sup> ICESCR, articles 4 and 5, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

<sup>5</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>

## The best interests of the child must be a primary consideration in all decisions and actions in the context of the pandemic (CRC Article 3)

Every decision, law, and policy made in the context of the pandemic should take into account the impact on children, including adolescents. The interests of individual children, and children as a group, including those who are the most vulnerable, must be a primary consideration in all decisions affecting them. This requires impact assessments to be conducted before making the decisions, including decisions pertaining to education and to a child's contact with his or her family. Children's views must be solicited in this respect and taken into account.



- UNICEF should continue to advocate with Member States that risk-informed, evidence-based decisions which systematically take into account the best interests of the child should inform all COVID-19 prevention, containment and response measures.

## Children should be heard and engaged in the response (CRC Articles 12, 13, 17)



Children of all ages (0-18) should be engaged in the response to COVID-19 and protection measures, in order to ensure compliance, suitability and avoid harm. Children should receive age-appropriate, accurate, regular and accessible information necessary for their well-being and physical and mental health in a language they are able to understand, and measures should be taken to

protect them from misinformation. They should be heard and able to safely share their views on issues concerning them, including through existing participation platforms online. Their views should be taken into account in preparedness, response and risk mitigation efforts for COVID-19, including the delivery of services and other decisions.

## Some children are particularly vulnerable to violations of their rights and any action must deliberately prevent or redress discrimination (CRC Article 2)

As the most vulnerable are and will continue to be the most affected, all actions should identify the children and families most in need – including but not limited to: children in street situations; children without parental care; children impacted by displacement, migration or statelessness; children with disabilities; children deprived of their liberty, including for national security reasons; and minority groups such as children who identify as LGBTI, or children from indigenous communities. Many children experience compound forms of vulnerability and discrimination. Girls in all these settings will face additional vulnerabilities and risks, including in relation to gender-based violence as well as in equally accessing basic services.



In addition, the risks faced by specific groups in accessing equally the limited resources and services available must be proactively assessed and targeted measures taken to mitigate them. Children from the identified groups have a right to receive tailored governmental support in order to be able to exercise their rights on an equal basis to others, without discrimination of any kind, including based on age, gender, race, ethnicity, nationality, disability, migrant status, religion, or status of their parents.

The most vulnerable and marginalized children will suffer the most as a result of measures such as strict self-isolation or quarantine, restrictions on movement and border closures, the prolonged closure of schools and learning programmes, and the closure of businesses without the appropriate social protection systems in place resulting in the loss of income and livelihoods.

These children may be at risk of increased violence, exploitation and abuse as a result of increased and prolonged separation from their families/caregivers when such caregivers are hospitalized or required to self-isolate/quarantine when sick. Equally, quarantines which force families to stay at home together for extended periods of time may put millions of children for whom the home is not a safe or caring environment in danger. All children required to isolate or quarantine will also bear the physical and mental health impacts of such confinement.

Children may additionally experience failures of due process in legal proceedings, including asylum determinations and proceedings, experience increased rates of arbitrary arrest and/or detention, may be victims of State harassment and intimidation, as well as being impacted negatively by increased levels of censorship and disinformation, as well as incitement and propaganda.

Heightened levels of xenophobia, racism and stigma will also have profound negative consequence on children, including especially for child migrants or those perceived as 'foreign'. These risks will be further exacerbated in situation of ongoing or increased unrest, civil strife, or armed conflict.



Where there is ongoing or emerging civil strife, unrest, or armed conflict, it is imperative that the provision of basic socio-economic and protection services during the pandemic are not politicised to target or discriminate against certain population groups, resulting in increased rights violations against certain demographic groups of children in this context.

Countries in which public health systems, including water and sanitation facilities, are already weak, as well as countries with dense urban populations or large informal settlements, will face increased challenges in ensuring that children, including adolescents, are able to employ risk mitigation measures such as physical distancing and frequent hand-washing to prevent the disease. Many children in these environments will also experience non-equitable access to health care facilities and services (should they fall sick with COVID-19 as well as for other health reasons), including due to physical and communication barriers, gender or migration status, and will struggle to access or continue quality learning as existing programmes are reduced or stopped, and school closures are increased and extended.



### **While States have a duty to protect human and child rights, private sector institutions have the responsibility to respect them**

In many contexts, businesses are facing grave economic conditions and threats to their continuing existence. Nevertheless, businesses are on the frontline in ensuring that working parents can support their families and that the rights of children do not suffer as a consequence of measures

taken by business—for example, redundancies, reduced wages or other measures which impact on the wellbeing or protection of children. Governmental support to businesses should include measures and mechanisms to enable employee retention and continuing payment of wages—and as businesses take decisions about how to mitigate the impact of the pandemic on their operations, they should consider the impact of their actions on the children and families of employees and suppliers, including those without formal contracts.

### UNICEF sectoral guidance on various child rights enshrined in the CRC

- **Principle of Non-Discrimination and Equality** (article 2)
  - [Social stigma associated with the coronavirus disease \(COVID-19\)](#)
  - [UNICEF's Five Actions for Gender Equality in the COVID19 response](#)
  - [Considerations for Children and Adults with Disabilities in COVID19 response](#)
  - [Quick Tips on COVID-19 and Migrant, Refugee and Internally Displaced Children](#)
  - [Indigenous Peoples and COVID-19 - A Guidance Note for the UN System prepared by the UN Inter- Agency Support Group on Indigenous Issues](#) also available [in Spanish](#)
- **Right to Development** (article 6)
  - [Implementing Child Rights in Early Childhood](#)
- **Right to seek, receive and impart information** (article 13)
  - [Key Tips and Discussion Points For community workers, volunteers and community networks \(C4D during COVID-19 response\);](#)
  - [Minimum quality standards and indicators in community engagement](#)
  - [Coronavirus outbreak: What parents should know](#)
  - [How to talk to your child about coronavirus disease 2019 \(COVID-19\). 8 tips to help comfort and protect children](#)
- **Right to be protected from all forms of violence** (article 19)
  - [Technical note on the protection of children during the COVID-19 pandemic,](#)
  - [COVID-19 and its implications for protecting children online](#)
  - [Technical note on COVID-19 and harmful practices](#)
  - [Not just hotlines and mobile phones: Gender-based violence service provision during COVID-19](#)
  - [Inter-Agency Standing Committee interim technical note: Protection from sexual exploitation and abuse during COVID-19 response](#)
  - [Gender Based Violence Case Management and the COVID-19 Pandemic](#)
- **Right to express her views on matters affecting her life** (article 12)
  - [Practical tips on Engaging Adolescents and Youth in the COVID-19 response](#)
  - [Toolkit for Young People to Spread Awareness and Take Action on COVID-19](#)
- **Rights of children deprived of a family environment** (article 20)
  - [Technical Note on COVID-19 and alternative care](#)
- **Right to the highest attainable standard of health** (article 24)
  - [UNICEF WASH Programme contribution to COVID-19 prevention and response](#)

- [Rights in the time of COVID-19 — Lessons from HIV for an effective, community-led response](#)
- [Briefing Note about mental health and psychosocial support \(MHPSS\) aspects of COVID-19](#)
- **Right to social and economic help** (article 26)
  - [Social protection response to COVID-19](#)
  - [Programme guidance: Strengthening shock-responsive social protection systems](#)
  - [Social protection and jobs responses to COVID-19: A real-time review of country measures](#)
  - [SPIAC-B: Joint statement on the role of social protection in responding to COVID-19](#)
  - [Gender-responsive social protection during COVID-19](#)
- **Right to Education** (article 28)
  - [School guidance for COVID-19 prevention and control](#)
- **Rights of children in detention** (article 37), **and in conflict with the law** (article 40)
  - [Inter-agency Technical Note on COVID-19 and Children Deprived of their Liberty](#)
- **Resources for other duty bearers:**
  - [Family-Friendly Policies and Other Good Workplace Practices in the Context of COVID-19: Key steps employers can take](#)





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<sup>1</sup> See Article 4 ICCPR and Human Rights Committee General Comment 29