

Children's rights in the era of the corona pandemic: Measures based on children's rights support and protect children and young people at times of crisis

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Deutsches Institut
für Menschenrechte

National CRC Monitoring Mechanism

Position Paper

Children's Rights in the Era of the Corona Pandemic

Measures based on children's rights support and protect
children and young people at times of crisis

May 2020

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1 Introduction

Thirteen million¹ children and young people under the age of 18² in Germany have been affected by the corona pandemic and the related restrictions. Over 11.4 million family households – 2.6 million of which are single-parent families – have been affected along with them.

While there is still much that we do not know about extent of the danger that Covid-19 poses for children, we do know that they are both susceptible to infection with the SARS CoV-2 corona virus and capable of spreading it. However, the data available thus far indicate that the course of the disease tends to be milder in children, including in babies and young children, than it is in adults.³

The Commission for Children's Concerns of the Bundestag, Germany's parliament, recently urged that greater consideration be given to children's rights when decisions are taken on measures to combat the corona pandemic, emphasising that when weighing concrete steps and the conflicts among the state's duties to protect health and to safeguard personal freedoms and the desire to minimise negative economic impacts, the effects on children must also be considered.⁴

It is important to emphasise here that children's rights are not limited to their protection rights: children also have a right to social contacts, to participation in their society, the right to engage in play and the right to early childhood and school-age education.⁵

Since mid-March, children have been unable to exercise these rights or been able to do so only in extremely limited ways. Childcare facilities, schools, playgrounds and sports facilities were largely closed, and associations and organisations that provide children and youth services suspended their offerings for children to a great extent. While many of these have since started up again, they are now available only in a very restricted scope.

Children could not and cannot maintain personal ties with other persons in the ways they were used to doing so, and this applies to ties with close relatives as well as to caregivers and friends. In view of these restrictions on children's activities, they and

¹ Destatis: Bevölkerung - Haushalte und Familien, accessible at <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Haushalte-Familien/inhalt.html> (accessed on 26 May 2020) and Destatis: Bevölkerung - Zahl der Einwohner in Deutschland nach relevanten Altersgruppen am 31. Dezember 2018 (in Millionen), <https://de.statista.com/statistik/daten/studie/1365/umfrage/bevoelkerung-deutschlands-nach-altersgruppen/> (accessed on 26 May 2020).

² As defined in the UN Convention on the Rights of the Child (UN-KRK), child means " (...) every human being below the age of eighteen years (...)" (Article 1 of the UNCRC). In this text, the wording "children and young people" is sometimes used as an alternative to the word "children" as defined in the UNCRC despite the fact that, in other contexts, the term "young people" often refers to both older children and young adults. The consideration here is twofold: (1) many older children prefer this term and (2) it allows this translation to adhere to the original of German version of this text which (reflecting normal German usage) distinguishes between *Kinder* (younger children) and *Jugendliche* (persons aged 14-18).

³ For more on this see, e.g.: <https://www.kindergesundheit-info.de/coronavirus-elterninformationen/covid-19-undkinder/> (accessed on 26 May 2020).

⁴ Press release issued by the Kommission zur Wahrnehmung der Belange der Kinder of 7 May 2020, accessible at <https://www.bundestag.de/resource/blob/694638/ac02d6edf056ef6bd6d111385fe1637d/Situation-der-Kinder-inder-Coronapandemie-data.pdf> (accessed on 26 May 2020).

⁵ Cf. inter alia articles 9, 10, 15, 16, 18, 20, 24, 31 UNCRC.

their families can be considered to be particularly affected by the corona pandemic:⁶ while it is true that the restrictions on movement outside the home curtail the social participation of children and adults alike, the possibility that such measures may hold back children's development or even result in development regression from which they can recover only with difficulty means that children are placed under a particular burden.⁷ In this context, it is important to bear in mind that individual children react to stress and pressures in very different ways. What is more, children do not have recourse to the means to defend themselves against state action that are available to adults, which intensifies their sense of powerlessness.

Even in times of crisis, human rights are binding for all states: if a state imposes measures limiting one or more individual human rights in order to safeguard another right – such as the right to health in the current situation – those measures must be proportionate. When there is no robust and comprehensive knowledge base to inform state decision-making – as in the case of the corona pandemic –, government decisions must be continually re-assessed with regard to whether they are achieving their intended aims and to the impacts they are having on the fundamental and human rights of all members of the population. The proportionality of such measures must be re-evaluated on the basis of this results of this assessment, and measures that are not proportionate must be adjusted or revoked.⁸

All human beings –children, young people and adults – have the same rights. States have a duty to protect and promote the human rights and fundamental rights of all persons on an equal basis and to enable everyone to participate as a means of realising those rights. In order to fulfil this duty, states have to be able to take swift action, but the same duty also requires them to consider the possible long-term consequences of any measures they introduce. The possibility of unanticipated long-term consequences is another reason that it is imperative to engage in regular, comprehensive assessments of proportionality of measures. Moreover, policymakers must bear in mind the possibility that restrictions on contacts can have harmful longer-term effects on children's health. They must also consider the situation of children who are not living with their families: for instance, children who live in residential care facilities operated by child and youth services or integration assistance institutions (*Eingliederungshilfe*), or in child and adolescent psychiatric institutions. The same applies to children with a parent who resides in an institution who cannot have direct personal contact with that parent due to state action to combat the pandemic. Any measures imposed must be proportionate in relation to their impact on these children as well, i.e. the state must ensure that there are accessible alternative means to maintain contact available to them.

⁶ See, for instance, Deutsche Welle: Internationaler Tag für gewaltfreie Erziehung - Corona: Kinder leiden im Lockdown at <https://www.dw.com/de/corona-kinder-leiden-im-lockdown/a-53266103> (accessed on 26 May 2020).

⁷ Cf. The statement of the German umbrella association for paediatrics: Deutsche Akademie für Kinder- und Jugendmedizin e.V.: Stellungnahme der Deutschen Akademie für Kinder- und Jugendmedizin e.V. zu weiteren Einschränkungen der Lebensbedingungen von Kindern und Jugendlichen in der Pandemie mit dem neuen Coronavirus (SARS-CoV-2), 20 April 2020, accessible at <https://www.dakj.de/stellungnahmen/stellungnahme-der-deutschen-akademie-fuer-kinder-und-jugendmedizin-e-v>

⁸ For a more in-depth discussion, see: Deutsches Institut für Menschenrechte (2020): Corona Crisis: Human rights must guide the political response, Position paper, March 2020, https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Stellungnahmen/Position_Paper_Corona_Crisis_-_Human_Rights_Must_Guide_the_Political_Response.pdf (accessed on 13 Aug. 2020).

Greater attention must be paid to the observance of fundamental and human rights in times of crises; limitations on these rights entail a danger to the entire population because the arguments involving the common good or the protection of individual groups that are used to justify them are often too sweeping. Each and every limitation must be carefully examined.

Children do not make up a single homogenous group. Thus, when designing of measures to combat the pandemic, policymakers must take the differing circumstances of children's lives into account. Article 2 of the United Nations Convention on the Rights of the Child (UNCRC) makes it quite clear that states have a duty to ensure that children are able to exercise their rights in a manner free of discrimination. This is particularly important with regard to children with disabilities, children from low-income families, refugee children and children whose beliefs are different. Measures taken to combat the pandemic must be proportionate in order to be free of discriminatory effect. Hence, they must pursue a legitimate aim, be suitable, necessary and reflect an appropriate balance of interests/rights.⁹ Individually or in collective effect, restrictive measures must never result in inhumane treatment.¹⁰

All children and young people have experienced constraints on their fundamental and human rights as a (direct or indirect) result of the measures to combat the corona pandemic. Situations which were already making children vulnerable to human rights harms have been exacerbated; children not at risk before have become vulnerable. The rise in the number of calls to the child protection hotline makes this appallingly clear, suggesting as it does a rise in the numbers of reported cases of domestic violence and increased risk of abuse. It is also reflected in the exacerbation of inequalities of opportunity that already existed in access to education.¹¹ Avenues for seeking help or reporting grievances that children are familiar with, i.e. by way of childcare facilities, schools or associations, are now no longer open to them in their low-threshold form. Restricting or even completely barring children from social contacts with, for instance, relatives or friends, can cause them to suffer from isolation and fears of loss as well.¹²

Swift action was essential at the start of the pandemic. Recognising this, the competent state bodies decided, rightly, that any measures they imposed should be temporary, and that they would continually re-evaluate the necessity and proportionality of (maintaining) them. In this regard, credit is due to the Federal Government and the Conference of Youth and Family Ministers of the Länder (JFMK), the Standing Conference of the Ministers of Education and Cultural Affairs (KMK) and the Conference of Minister Presidents (MPK), and the Federal Chancellor for their

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¹⁰ Cf. Deutsches Institut für Menschenrechte (2020): Menschenrechte Älterer auch in der Corona-Pandemie wirksam schützen, p.4, accessible at https://www.institut-fuermenschenrechte.de/fileadmin/user_upload/Publikationen/Stellungnahmen/Stellungnahme_Menschenrechte_Aelterer_auch_in_der_Corona-Pandemie_wirksam_schuetzen.pdf (accessed on 26 May 2020).

¹¹ See, for instance, the statement issued by the child protection NGO Deutscher Kinderschutzbund Bundesverband on 05 May 2020: "Kinder in der Corona-Krise" submitted to the Commission for the Concerns of Children of the German Bundestag, accessible at: <https://www.dksb.de/de/artikel/detail/stellungnahme-kinder-in-der-corona-krise-fuer-die-kinderkommission-desdeutschen-bundestags/> (accessed on 26 May 2020).

¹² Bundesamt für Bevölkerungsschutz und Katastrophenhilfe (2020): COVID-19: Tipps für Eltern, accessible at https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/C/Coronavirus/Handreichung_COVID-19_Tipps_fuer_Eltern.pdf (accessed on 26 May 2020).

increasing efforts to move forward with removing the restrictions affecting children and young people. The action taken to gradually re-start education and childcare offerings for children could not be more welcome. Setting the length of the transition periods prudently, finding a careful balance among the opposing legally protected interests and providing an adequate financial base for necessary measures: these are the special challenges awaiting us now.

Another challenge lies in the need to strengthen and support children's ability to realise their rights to participation and to be heard. In recent months, only a few children's and youth organisations managed to bring their positions to the public and/or organise an opinion-forming process. Accordingly, the views of organisations of this type received little hearing in connection with state decision-making on fundamental issues relating to combatting the Covid-19 pandemic.

Intended as a contribution to the ongoing discussion, this position paper of the Monitoring Mechanism for the UN Convention on the Rights of the Child seeks to focus attention on the special situation of children and the fulfillment of their right to health as required under the provisions of the UNCRC. Thus, it does not attempt to provide a comprehensive treatment of the question of the extent to which the human rights of children should be or have been considered in connection with combatting the corona pandemic.

2 Holistic approach to the right to health

The right to health (article 24 of the UNCRC) is characterised by a holistic and positive understanding of health and thus corresponds with the World Health Organisation's guiding concept of health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.¹³ In this broad interpretation, the right to health interacts with all of the individual rights of the UNCRC¹⁴ and in doing so is strongly linked with the principle of the primary consideration of the best interests of the child under article 3, paragraph 1, of the UNCRC, as it is with other principles. Taken together, article 24, paragraph 1, and article 3, paragraph 1, of the UNCRC make it clear that given multiple courses of action which may have – indirect or direct – effects on children's health, states should always choose the option that will best promote the health of children.

The right to health demands that health services should be accessible to everyone, even during a pandemic.¹⁵ In its General Comment on the right of the child to the enjoyment of the highest attainable standard of health,¹⁶ the UN Committee on the

¹³ World Health Organization (WHO) (1946): Preamble to the Constitution of the World Health Organization (WHO) as adopted by the International Health Conference, New York, 22 July 1946; UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, paras. 4 and 7.

¹⁴ UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 7.

¹⁵ UN, Committee on Economic, Social and Cultural Rights (2000): General comment No. 14 on the right to the highest attainable standard of health (Art. 12), UN Doc. E/C.12/2000/4, para. 12b.

Rights of the Child (UN Committee) clarified the content of article 24 of the UNCRC. According to this document, the content of article 24 encompasses timely and appropriate measures aimed at maintaining children's health and children's right to right to grow and develop to their full potential in conditions enabling them to attain the highest standard of health.¹⁷

The core principles of the UNCRC apply to the right to health set out in article 24, as they do to the Convention's other rights. Non-discrimination (article 2 of the UNCRC); the right to life, survival and development (article 6 of the UNCRC); the best interests of the child; and respect for the views of the child (participation) (article 3, paragraph 1, of the UNCRC): these four principles form the basis for the realisation of all rights arising from the UN CRC. They provide clarity in many respects, for instance, by making it plain that the developing abilities of children must be taken seriously and attesting to children's status as holders of human rights. Recognising that childhood is a period of continuous growth, the UN Committee has pointed out that each phase of childhood is of significance for a child's physical, psychological, emotional and social development,¹⁸ and that impacts on and/or disturbances in this development can influence children's health. In this context, the UN Committee underlines the negative effects that can arise due to a lack of autonomous decision-making on health issues.¹⁹

The best interests of the child (article 3 of the UNCRC) should be the starting point for decisions about resource allocation and the implementation of policy strategies. Article 3, paragraph 1, of the UNCRC says that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." In its General Comment No. 14, the UN Committee emphasises that the requirements of article 12 of the UN CRC must be met – the child's right to express his or her views freely must be respected and due weight must be given to said views – in order to assess the child's best interests properly.²⁰

3 Significance of the non-discrimination principle

The right to non-discrimination against imposes a fundamental obligation on states that are party to the UNCRC: states must "respect, protect and fulfil" all of the Convention's rights without discrimination of any kind. Article 2 of the UNCRC prohibits racist discrimination and discrimination on the basis of colour; national, ethnic or social origin; language; sex; religion; political or other opinion; disability; birth or any "other status" of relevance to discrimination. The term "other status" indicates that the dimensions of discrimination listed do not form an exhaustive list;²¹ forms of

¹⁷ UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 2.

¹⁸ UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 3 and 20 ff.

¹⁹ UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 21.

²⁰ UN, Committee on the Rights of the Child (2013): General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), UN Doc. CRC/C/GC/14, para. 43.

²¹ UN, Committee on Economic, Social and Cultural Rights (2009): General comment No. 20 on Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20, para. 27.

discrimination evolve over time and can change. Moreover, discrimination can be linked to a status associated with someone's parents or relatives.²² In addition, one has to bear in mind the effects that intersectionality and multiple discrimination²³ can have.²⁴ This understanding of discrimination, as used in the UNCRC, should be taken into account in the design of every individual measure. As an example, policymakers should ensure that children in situations of vulnerability, e.g. girls with disabilities, receive additional health services or support sufficient to their needs.

4 Challenges and measures in times of crisis

A holistic approach of the right to health continues to be appropriate during a crisis like a pandemic, although it is true that times of crises pose considerable challenges for this approach:²⁵ pandemics give rise to situations that pose risks to children's rights, not only with respect to their immediate health care needs²⁶ but also and especially because measures taken to combat a pandemic can have indirect and far-reaching impacts on children's lives.²⁷

For this reason, measures aimed at realising the right to health should reflect, as far as possible, a combination of the children's rights principles set out in the subsections below. These principles supplement one another and none of them should ever be understood as having greater or lesser priority than any other:

4.1 Access to information for children and young people

Article 17 of the UNCRC gives rise to an obligation to provide children with information that is child-friendly and accessible. This obligation is all the more important during a pandemic,²⁸ because the exceptional circumstances of a pandemic have substantial impacts on children's lives and can give rise to fear and feelings of insecurity. Often, children become aware that the persons who take care of them are also feeling insecure or helpless, and this can exacerbate feelings of this kind. For the state's part, ensuring access to child-friendly information during pandemics involves communicating to children in a way they can understand about what is going on from day to day, what actions the state is taking and for what purpose, what the health risks are and what possibilities for prevention exist.²⁹ However, it also includes the provision

²² Cf. UN, Committee on Economic, Social and Cultural Rights (2009): General comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20, para. 16 – the example relates to the effects on relatives of children with disabilities.

²³ See also UN, Committee on Economic, Social and Cultural Rights (2009): General comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20, para. 17.

²⁴ Intersectionality recognises that multiple dimensions of discrimination can operate simultaneously. Multiple discrimination also encompasses the effect of multiple dimensions at different times and in different situations.

²⁵ UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 5.

²⁶ A case in point is the situation of children living in initial reception centres and communal accommodation facilities, whose cramped quarters make compliance with the necessary hygiene and physical distancing rules impossible and who thus may be exposed to risks of infection.

²⁷ Cf. UN, Committee on the Rights of the Child (2020): COVID-19 Statement of 8 April 2020, point 1, accessible at https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/INT_CRC_STA_9095_E.docx (accessed on 26 May 2020).

²⁸ Cf. UN, Committee on the Rights of the Child (2020): COVID-19 Statement of 8 April 2020, point 10.

²⁹ UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 59.

of information about whom children can turn to for help.³⁰ Ensuring that the information is genuinely accessible to children is crucial in this regard:³¹ the provision of low-threshold information about help hotlines in the form of posters displayed in supermarkets provides a good example for how information can be disseminated in children's immediate environments.³²

4.2 Incorporation of children's perspectives

The incorporation of children's perspectives is a requirement that follows from the interaction of the UNCRC's article 3, paragraph 1, with article 12 – the best interests of the child can only be assessed and determined with the child's participation.³³ Moreover, it is also an approach that increases the effectiveness of protective measures: children's participation is a key element in the child protection toolbox. This is because there are risk situations only become visible if the perspectives of children are incorporated into the overall picture – in the current context, this could apply both to risks relating to the direct provision of health services and to indirect risks created by measures to combat the pandemic. Furthermore, the integration of children's perspectives is associated with higher levels of acceptance of measures that are imposed among children. Thus, children's participation becomes all the more important during a pandemic.³⁴

In times of crisis, the possibilities available for establishing new formats and structures³⁵ for children's participation are limited, rendering it all the more important to make intensive use of existing structures enabling the perspectives of children to be taken into account in state decision-making. This is extremely important with regard to state decisions that are going to have severe impacts on children's futures even in the long-term.

4.3 Identifying problem areas and support needs

The right to health imposes an obligation on states to identify factors influencing children's health.³⁶ Given the broad understanding of health used in article 24 of the UNCRC, this means that all circumstances of the lives of children have to be considered. As pandemics have far-reaching and continually changing impacts on the circumstances of children's lives, the state must continually investigate those

³⁰ Cf. statement by the Lanzarote Committee Chair and Vice-Chairperson on stepping up protection of children against sexual exploitation and abuse in times of the COVID-19 pandemic, p. 1, accessible at <https://rm.coe.int/covid-19-lc-statement-en-final/16809e17ae> (accessed on 26 May 2020).

³¹ UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 58.

³² See, for instance, the press release issued by the Federal Ministry for Family Affairs, Senior Citizens and Youth (BMFSFJ) on 29 Apr. 2020, "Supermarkt-Aktion gegen häusliche Gewalt gestartet", accessible at <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/supermarkt-aktion-gegenhaeusliche-gewalt-gestartet/155054> (accessed on 26 May 2020).

³³ For a more in-depth discussion see Feige, Judith / Gerbig, Stephan (2019): Das Kindeswohl neu denken, Deutsches Institut für Menschenrechte, accessible at https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Information/Information_30_Kindeswohl_bf.pdf (accessed on 26 May 2020).

³⁴ Cf. UN Committee on the Rights of the Child, COVID-19 Statement, 8 April 2020, point 11; UN, Committee on the Rights of the Child (2009): General comment No. 12 (2009) on the right of the child to be heard, UN Doc. CRC/C/GC/12, para. 125f..

³⁵ Consultations with the Länder-level representatives of school pupils and the federal and Länder youth councils come to mind in this context.

³⁶ Cf. UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 32.

circumstances. Associated with this is a need to identify changing or increasing needs for assistance. It also means that those responsible for state actions must keep themselves informed about the changing circumstances of children's lives, whether this be through reports issued by organisations and federations that work for and with children and their families or through research projects initiated by the Federal Government or one of the Länder (federal states), which should be strengthened and promoted.³⁷ Furthermore, the state should take steps to promote the acquisition of additional knowledge about the altered circumstances of children's lives and new risk situations, initiating and strengthening research projects in this area.

4.4 Particular attention to pre-existing situations of disadvantage

To fulfil the right to health in a non-discriminatory way, the state must identify disadvantages that already exist and take targeted action to remedy them:³⁸ The right to non-discrimination (article 2 of the UNCRC) requires states to take steps to diminish existing inequalities rather than merely to protect children from unequal treatment when taking new measures.³⁹ The UN Committee has therefore also called upon states to ensure that children in situations of particular vulnerability, e.g. children with disabilities, have access to health services sufficient to their needs and ensure that they can at times receive additional health services and information.⁴⁰ The area of child protection provides a good example here: Telephone hotlines function as a key source of help and information for children, particularly during a lockdown, so states must take steps to ensure that such hotlines are available and accessible to all children, including children with disabilities. If they cannot ensure this with respect to the latter group, they must provide alternative forms of assistance.

5 Impacts on children's psychosocial health

The UN Committee has emphasised that safeguarding children's right to health necessarily includes addressing the particular challenges to children's health that arise in conjunction with a state emergency or other exceptional situation.⁴¹

Once again, it is absolutely essential that policymakers ensure the proportionality of regulations prohibiting direct personal contacts. In order to be proportionate, such measures must provide for alternative ways to maintain connections and support. The longer that measures prohibiting direct personal contact are in effect, the more severe their impacts become. In such situations, the state must take all steps necessary to ensure both that children have uninterrupted access to health services and that they

³⁷ Cf. Declaration of the Committee of the Parties to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) on the implementation of the Convention during the COVID-19 pandemic, p. 3, accessible at <https://rm.coe.int/declaration-committee-of-the-parties-to-ic-covid-16809e33c6> (accessed on 26 May 2020).

³⁸ Cf. UN, Committee on the Rights of the Child (2020): COVID-19 Statement of 8 April 2020, point 7); UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 98.

³⁹ Cf. UN, Human Rights Committee (1989): General comment No. 18 on Non-Discrimination, UN Doc. CCPR/C/GC/18, para. 10.

⁴⁰ Cf. UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 8 and 15.

⁴¹ Cf. UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 40.

receive psychosocial support, for instance through prevention programmes, in order to prevent or address fear and traumas.⁴²

Recognising a need for increased attention to social issues that undermine children's mental health, psychosocial wellbeing and emotional development, the UN Committee has urged states to promote approaches that address mental health problems among children and young people or facilitate their early detection and treatment in connection with the fulfilment of the right to health.⁴³

The UN Committee has also underlined the fact that rest and recreation are important to children's development and growth. Leisure provides children with time and space without obligations, and there should be offerings available to them which they can use at their own discretion. Leisure and rest are just as important for children's development as are the basics of nutrition, housing and education.⁴⁴ The realisation of the right to health set out in article 24 of the UNCRC is not possible without the realisation of the right to rest, leisure, play and recreational activities set out in article 31 of the UNCRC.⁴⁵

6 Addressing risks of discrimination in the implementation of the right to health

Particularly at times of crises, policies tend to be geared towards the needs of a majority. However, unless regulatory provisions provide for the possibility of exceptions, this means that persons in situations of vulnerability and disadvantage are subject to rules that were shaped by policymakers' concept of the majority, laying the groundwork for the exacerbation of already existing vulnerabilities and inequalities.

Times of crisis render it more difficult to seek judicial review of a regulation that fails to provide explicitly for the possibility of exceptions in order to push through a human rights-based exemption, especially if judicial infrastructure is being reduced to a minimum and supplementary assistance services that facilitate access to justice are not available or are available only to a limited extent.

It is therefore essential that state authorities proceed, right from the start, with great sensitivity to fundamental rights when implementing or enforcing a new state rule. Children already face greater obstacles when it comes to access to justice; during pandemics, these barriers grow even higher due to the factors detailed above. In view of all this, it is of crucial that regulations affecting children should be designed to allow children's individual needs and situations of particular vulnerability to be properly taken into account. This applies, for instance, to the gradual re-opening of education institutions and the question of which children should continue to be excluded from

⁴² Cf. UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 40.

⁴³ Cf. UN, Committee on the Rights of the Child (2013): General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 38.

⁴⁴ Cf. UN, Committee on the Rights of the Child (2013): General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), UN Doc. CRC/C/GC/17, para. 13. ⁴⁶

⁴⁵ Cf. UN, Committee on the Rights of the Child (2013): General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), UN Doc. CRC/C/GC/17, para. 25.

attending in order to protect someone – e.g. because the child or a member of their household is particularly at risk. In such cases, it is imperative that the authorities ensure that children who are excluded from attending school receive special support during and after the pandemic.

7 Conclusions and outlook

The corona crisis is affecting children and young people in distinct ways. To uphold the human rights of all persons, states must avoid thinking of human beings as one homogenous group and resist the impulse to take sweeping measures. Instead, they must guarantee that all regulations and decisions are at once nuanced and non-discriminatory.⁴⁶ This remains just as true when the rights being affected are those of children. Article 4 of the UNCRC places an obligation on the federal, Länder and local governments to take all measures appropriate for the full implementation and protection of the rights of the child; caring for their mental health is part and parcel of this. It is absolutely essential to bear in mind that provisions prohibiting direct personal contacts must always be proportionate. A responsible approach to drafting provisions of this kind necessarily entails an effort to create opportunities for alternative forms of contact, for the longer prohibitions on direct personal contacts are in place, the more severe their effects become.

The policy debates and the measures put in place in Germany have made it clear that children, in their role as independent rights holders, are easily overlooked. State measures in Germany have not gone far enough with regard to realising the UNCRC in the current crisis. Children and young people are also at risk, and their rights should be considered, particularly now, during the pandemic. It is in situations of crises, in particular, that the actions of policy makers and society as a whole should be assessed in terms of their effects on human rights and make it clear that all human lives are equally valued.

The importance of incorporating children's rights into the Basic Law (Grundgesetz, the German constitution) has now become very apparent, along the consequences of the lack of action on the part of the Federal Government in this respect. Establishing the core principles of children's rights in the constitution would have lent greater prominence to the primary consideration of the best interests of the child, even during the corona crisis, and the obligation to provide for children's participation in the eyes of persons bearing political responsibility, the judiciary and administrative bodies. Children's rights have already been incorporated into the constitutions of many Länder, but not into the Basic Law. While German jurisprudence recognises children as independent fundamental rights-holders and thus as being entitled to invoke all of the fundamental rights enshrined in the Basic Law, there is no explicit mention of child-specific rights in the Basic Law with the result that they often overlooked or not taken sufficiently into account.

⁴⁶ Another position paper of the German Institute for Human Rights of relevance to the principle of non-discrimination during the corona crisis can be found at https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Stellungnahmen/Position_Paper_Corona_Crisis_-_Human_Rights_Must_Guide_the_Political_Response.pdf (accessed on 14 Aug 2020).

States should ensure that actions they have taken to respond to challenges arising in the corona crisis or during a future pandemic are fully compliant with the requirements of the UNCRC to make sure that they do not have long-term effects that are not in the best interest of children. The Federal Government and the Länder should therefore take steps to ensure that children and young people have access to information and that children's views and opinions are taken into account. Policymakers must keep themselves informed about how measures are affecting children, young people and their families and/or initiate research into those impacts, including with respect to long-term consequences. In this regard, the Federal Government and the Länder must take decisive action to counter existing disadvantages faced by children, particularly disadvantages faced by children in situations of heightened vulnerability.

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