BOFAXE
The Kids Aren’t Alright (Part 1)

ONE YEAR OF PANDEMIC RESTRICTIONS ON CHILDREN’S RIGHTS

People who walked along the East River in mid-March towards the UN’s headquarters in New York found a peculiar picture: 168 empty school tables with blue UNICEF school bags on them. In front, a chalkboard which read: Class Attendance – Absent: 168 Million Children. This thrilling number, twice the size of the German population, is a brisk reminder of COVID-19’s detrimental impact on children’s rights which went largely unnoticed. This blog post offers some brief reflections on the effect of 15 months of COVID-19 on children’s rights to education and mental health.

Children’s Right to Education

The most visible infringement pertains to children’s human right to education. In March, UNICEF estimated that for roughly 168 million children worldwide schools had been closed for over a year due to lockdowns. At the same time, only one in three children could attend school remotely; approximately 463 million children had no connection to their schools and, hence, one third of all children had no access to a quality education.

Of course, states had a reasonable justification for their sweeping measures – after all, they were trying to contain a deadly virus, which has claimed millions of lives. But is upending millions of children’s educations a necessary and proportionate measure in the fight against COVID-19?

Children’s right to education is most prominently enshrined in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 28 of the Convention on the Rights of the Child (in addition to numerous regional treaties and national constitutions). Article 28 of the CRC grants states a far-reaching discretion concerning the contents and methods of education provided that they are appropriate to achieve the aims of education enumerated in Article 29 (see here pp. 1062 et seq.). Although Article 28 seems to presume some form of in-person schooling, this is in fact not required. Thus, the transition to online school or lessons via radio and TV is not per se inconsistent with children’s right to education.

However, as the Special Rapporteur on the Right to Education and the ESCR Committee have elaborated, the quality of the remote education needs to satisfy the so-called “4A-framework” (here, para. 6). Accordingly, education needs to be available, accessible, acceptable, and adaptable to fulfill states’ obligations under Article 28. It is in this context that COVID-19 jeopardizes children’s education.

For one, the availability of an adequate education is limited to those children, who have the technological means to attend online school (the so-called “digital divide,” here pp. 56-85). Already in April 2020, the German Economic Institute detailed how children, whose parents receive social security, usually had limited access to shared computers and workspaces. Moreover, the accessibility of education can be severely limited for people in rural areas without any telecommunication connections (here, p. 11), or persons with disabilities (e.g., visual or hearing impairments; here, p. 11). Preliminary studies already show that the acceptability/quality of education has also suffered all around the world due to less hours of instruction in fewer subjects and due to the fact that students were often left to learn on their own (see here pp. 86-93). Analyzing foundational reading skills for 9-14 years old children, UNICEF found that those affected by school closures and distance learning were far behind their peers in previous years (here, p. 9).

Furthermore, the in-person school environment is crucial for the realization of other rights of the child. For instance, many children receive their only hot meal at school, sparing them from malnutrition and securing their right to an adequate standard of living (Article 27 CRC, here pp. 104 et seq.). For some children schools are the only safe learning environment where they can focus on their education free from domestic abuse, the dangers of armed conflicts or other distractions (realizing their right to be protected from all forms of violence in Article 19 and their right to development in Article 29 CRC). Even more alarmingly, early evidence gathered and reviewed by the ILO and UNICEF suggests that school closures are correlated with an unprecedented increase in child labor and child marriages. All these factors will lead to increased long-term dropout rates and rising numbers of children whose educational careers were abruptly stopped before they even started.

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The Kids Aren’t Alright (Part 2)

ONE YEAR OF PANDEMIC RESTRICTIONS ON CHILDREN’S RIGHTS

Children’s Right to (Mental) Health

Although children are significantly less likely to contract a severe COVID-19 infection, their mental and physical health suffered significantly during the pandemic. All around the world children’s access to routine pediatric care continues to be significantly interrupted – with chronically ill and disabled children worst affected. One visible effect is, for instance, a global decline in childhood vaccination rates. At the same time, some reports show an increase in domestic violence (see here and here).

As if this was not bad enough, the pandemic’s most detrimental impact concerns children’s mental health. While children’s right to health clearly includes a right to mental health (see here, para. 35; here, and here), governments and news agencies in various countries have been ringing the alarm bells about children’s mental well-being after a year of social isolation (e.g., here, here, and here). Widespread symptoms include depression, anxiety, substance abuse, or even suicide.

That it had to come to this point is mainly due to the fact that states neglected children’s entitlements under their right to health (Article 24 of the CRC). While the ESCR Committee clarified that “the right to health is not to be understood as a right to be healthy” (here, para. 8), the CRC Committee interprets Article 24 as an entitlement for children, and an obligation for states vice versa “to enjoy conditions that will maximize the potential for a child to enjoy his or her health in the light of their personal circumstances and the resources available to a state” (here, pp. 106 et seq.). Quite similar to Article 28, the ESCR and CRC Committees have developed a so-called “3AQ-framework” to clarify states duties under Article 24 (here, para. 12; and here, paras. 112–116). The 3AQ-standard builds on the availability, accessibility, acceptability, and quality of health care for children.

The prima facie evidence reviewed above suggests that most states deliberately neglected children’s entitlements in this regard. For instance, despite rising numbers of children in need of psychological or psychiatric treatment, even the most developed countries appear to be overwhelmed. In terms of availability, specialists and specialized clinics often do not have enough spots. And even if treatment would theoretically be available, in many states mental health care is economically inaccessible since it is not covered by most health insurances.

Some of the consequences of disregarding children’s health during the pandemic are already visible in the form of significantly increased anxiety and depression rates, suicide attempts or other mental health conditions.

Justifying Limits on Children’s Rights during a Global Pandemic

It is true that most rights in the CRC, including the rights to education and health, are not absolute and states are allowed to derogate from them during a national emergency (here, pp. 138 et seqq.) or otherwise limit them for a legitimate reason such as public health. Of course, any sort of derogation is only justifiable if it is necessary and proportionate.

At the moment, however, medical experts, politicians, lawyers and academics alike, seem to disagree about which measures are necessary and proportionate to contain COVID-19 on a daily basis. Fortunately, the CRC contains at least three additional safeguards, which require states to (1) consult children’s views (Article 12 CRC), (2) respect the principle of non-discrimination (Article 2 CRC), and (3) treat their best interests as a primary consideration (Article 3 CRC) whenever states take any derogating/limiting/retrogressive measures on rights in the CRC. After the above analysis, it is a fair assessment that it remains a challenge for states to react to COVID-19 without inadvertently privileging adults over children, rural areas over cities, poorer parts of the population over wealthier ones and thus engaging in indirect discrimination. Additionally, when policymakers decide on specific measures, children’s views ought to be considered and their best interests need to be taken into account in accordance with Articles 12 and 3(1) of the CRC. In this light, the measures assessed above which states adopted to curb the spread of the virus are hardly justifiable under the CRC and have a detrimental effect on children’s rights and well-being. Already months ago, some of the world’s leading scientists, including Nobel laureates and Ivy-League professors, advocated for a more sensible and impact-focused fight against the virus.

I join the call that children’s rights, their views and best interests should be added to the list of priorities. While COVID-19 seems to come to an end in much of the developed world, it will continue to rage for months – if not even years – in countries, which do not yet have widespread access to vaccines. Simply putting children’s rights on hold is neither a sustainable nor a lawful strategy against a global pandemic.