# Contribution from Benoit Van Keirsbilck, member of the UN Committee on the rights of the child to the [OHCHR call for inputs on the rights of the child and inclusive social protection](https://www.ohchr.org/en/calls-for-input/2023/call-inputs-rights-child-and-inclusive-social-protection)

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## Introduction

This submission is made by Benoit Van Keirsbilck, member of the UN Committee on the rights of the child, but in his personal capacity, in response to the Call for inputs on rights of the child and inclusive social protection from the OHCHR, in view of informing the High Commissioner’s report on the rights of the child and inclusive social protection to be presented at the 54th session of the Human Rights Council in September 2023.

There is no doubt that the social protection of children is a key element in the enjoyment of fundamental rights, especially for children.

Child poverty rates remain extremely worrying and despite the commitments of the international community (notably through the Millennium Development Goals and the Sustainable Development Goals), these rates remain incredibly high.

The repeated crises that the world is experiencing, and in particular certain regions and countries, have a considerable negative impact on the lives, survival and development of children and more generally on the enjoyment of fundamental rights.

In particular, the economic impacts of the COVID-19 pandemic have seriously affected children’s rights in many ways including due to the loss of jobs or reduced income of their parents, which put their families in poverty. This experience reaffirms the importance of building resilient societies from the child rights point of view as well. Three years after the COVID-19 pandemic, the realisation of many rights of the child- the right to education, the right to the highest stainable standard of health, the right to food and adequate nutrition and the right to a satisfactory standard of living- continue to be heavily impacted for many children around the world. These will weigh negatively on the future of millions of children.

When accelerating the economic recovery from the COVID-19, the social protection should be strengthened to be prepared for economic shocks from future pandemics, natural disasters and other crisis.

Indeed, the response of some states to these crises, notably during the Covid pandemic, has demonstrated that social protection measures can mitigate the effects on the most vulnerable populations.

However, the response provided by states often remains very fragmented, unstructured and generally lacks a long-term vision. It is also based on a lack of figures and disaggregated data, which means that it is not possible to identify the most vulnerable categories of children and adjust policies to their needs.

During the examination of the State parties reports, the CRC Committee attaches great importance to the follow-up of the measures taken during the period of the COVID 19 and Post-COVID 19, and urges States parties to take all the necessary measures to implement the Convention on the Rights of the Child and its two Optional Protocols on the sale of children, child prostitutions, and child pornography as well as on the involvement of children in armed conflict " and this, in close relationship with the implementation of SDGs and to guarantee the participation of children in the design and monitoring the strategies and actions undertaken in this area.

The CRC Committee considers that the acceleration of the recovery from COVID 19 and the achievement of the 2030 Agenda requires urgent actions, solid and viable partnerships by investing without further delay in the rights of the child; ensuring that the child is actually at the heart of the strategies, policies and actions of all actors, including the UN; considering the consecration of children's rights as a major question of the World Summit for the Future, where no future can be considered in the absence of a clear vision and sincere commitment to children and their rights.

A rights-based approach to inclusive social protection is fundamental to the proper implementation of children's rights at national and international levels. Certain principles such as equality, non-discrimination, participation, transparency and accountability must necessarily be applied in the design, implementation, monitoring and evaluation of social protection systems.[[1]](#footnote-1)

The Committee supports all SDG and in particular target 1.3 and 10.4 which call on all countries to implement nationally appropriate social protection systems and measures, including social protection floors, to end poverty by 2030. In Europe, at least 20% of the total the European Social Fund[[2]](#footnote-2) resources in each Member State is earmarked for activities aimed at promoting social inclusion and combating poverty.[[3]](#footnote-3)

Therefore, the Convention on the Rights of the Child, the Concluding Observations and the Committee's General Comments encourage States Parties to implement policies and programmes to strengthen their inclusive social protection systems and to reduce vulnerabilities and share wealth within society.

Despite the factors, no common definition is available on inclusive social protection but, in their reports, UNICEF defines this concept as follows : “*Mainstreaming social inclusion in social protection interventions, which implies moving away from targeted approaches towards particular groups and looking at the underlying causes of exclusion these groups share – such as discrimination and stigma; traditional social norms preventing use of services; limited assets and visibility - while considering the added vulnerabilities associated with the different dimensions which further exacerbate exclusion and deprivation*.”[[4]](#footnote-4) In this paper, the Committee will use this definition to refer to inclusive social protection.

The Committee wishes to emphasise that one of the most important problems preventing the proper realisation of children's rights is the lack of disaggregated data at national and local levels. This problem does not allow states to have an inclusive social protection system that supports and provides for all children.

Children need to be recognized as important stakeholders in building resilient and sustainable societies; their genuine participation should be included. Such processes must be accessible, inclusive and meaningful to children and take into account their evolving capacities and their best interests at all times.

Of course, the development of an integral social protection should consider the child in his familial and social environment. A child is not poor by itself; poor children are part of poor families and poor areas, communities, minorities.

## States Parties obligations

### UNCRC Convention

The Convention on the rights of the child recognizes three main aspects of the inclusive social protection: **first**, under article 6 on the right to life, survival and development, **second** under article 26 on the right of social security, and **finally** under article 27 on the right of social protection. But, they are also linked to the others articles because social protection plays a role in the realisation of: the right of non-discrimination (article 2) the best interests of the child (article 3), the right the rights for children on the move (article 22), the right of children in alternative care (article 25), the right to education (article 28), the rights in the context of child labour (article 32). Furthermore, article 4 is particularly important to frame State parties obligations in regard to legislative, administrative and … financial measures to fully implement children’s rights to social protection.

#### Article 4 of the Convention is singularly important as it provides that:

“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. **With regard to economic, social and cultural rights**, States Parties shall undertake such measures **to the maximum extent of their available resources** and, where needed, within the **framework of international co-operation**.”

This article imposes an obligation to move as expeditiously and effectively as possible towards the full realization of all rights, including economic and social ones. The States must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, at least minimum core obligations to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party.

In its concluding observation, the Committee often urges countries to seek and use international cooperation and technical assistance. It also encourages donor countries to ensure that their aid programmes follow the lines of the Convention and establish a clear priority for children to foster implementation of the Convention, including economic, social and cultural rights of children. The Convention should form the framework for international development assistance.

#### Article 6 on the right to life, survival and development

“1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to **the maximum extent** possible the survival and development of the child.”

The paragraph 12 of the General Comment no 5 of the UNCRC Committee explains that this article highlights the States parties’ obligations to ensure the right of life, survival and development of the child, including the physical, mental, moral, spiritual and **social** dimensions of his or her development.[[5]](#footnote-5)

#### Article 26 on the right to benefit from social security

“1. States Parties shall recognize for every child the right to benefit from **social security**, **including** **social insurance**, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.”

Wouter Vandenhole[[6]](#footnote-6) highlights that: “*Usually, social security and social insurance are used more or less as corresponding terms. Lamarche specifies that social insurance is nevertheless different from social security, in that “social insurance refers to a technique of providing social security benefits to workers and their families at the national level*”.[[7]](#footnote-7)

#### Article 27 on the right to benefit from social protection

“*1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*

*2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*

*3. States Parties, in accordance with national conditions and within their means, shall take* ***appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.***

*4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements*.”

This article 27 “can be understood as a general guarantee to an adequate standard of living, which is specified in both Articles 26 (social security) and Article 27.3 (social assistance) of the CRC”.[[8]](#footnote-8)

### UNCRC General Comments

#### General Comment 19

Under paragraph 31, States parties have an obligation to ensure the economic, social and cultural rights of children during economic crises such as the COVID 19 pandemic.

“The obligation imposed on States parties by article 4 to realize children’s economic, social and cultural rights “to the maximum extent” also means that **they should not take deliberate retrogressive measures in relation to economic, social and cultural rights**. States parties should not allow the existing level of enjoyment of children’s rights to deteriorate. **In times of economic crisis, regressive measures may only be considered after assessing all other options and ensuring that children are the last to be affected, especially children in vulnerable situations.** States parties shall demonstrate that such measures are necessary, reasonable, proportionate, non-discriminatory and temporary and that any rights thus affected **will be restored as soon as possible**. States parties should take appropriate measures so that the groups of children who are affected, and others with knowledge about those children’s situation, participate in the decision-making process related to such measures. **The immediate and minimum core obligations imposed by children’s rights shall not be compromised by any retrogressive measures, even in times of economic crisis**.”

The joint statement “Corruption and Human Rights”[[9]](#footnote-9) precises that this General Comment no 19 “made a connection between corruption and lack of transparency in public financial management and between corruption and the **obligation to use resources efficiently for the realization of children’s rights**.[[10]](#footnote-10) [In this context], it has often called upon States to strengthen institutional capacities to tackle corruption and ensure, including through the eradication of corruption in public procurement, that budgets for programmes and services supporting the realization of children’s rights are fully and efficiently spent.”[[11]](#footnote-11)

#### General Comment 22

The letter k of the paragraph 32 precises that : “If determined that it is in the best interests of the child to be returned, an individual plan should be prepared, together with the child where possible, for his or her sustainable reintegration. The Committees stress that countries of origin, transit, destination and return should develop comprehensive frameworks with dedicated resources for the implementation of policies and comprehensive inter-institutional coordination mechanisms. Such frameworks should ensure, **in cases of children returning to their countries of origin or third countries, their effective reintegration through a rights-based approach, including** immediate protection measures and long-term solutions, in particular effective access to education, health, psychosocial support, family life, **social inclusion**, access to justice and protection from all forms of violence. In all such situations, a quality rights-based follow-up by all involved authorities, including independent monitoring and evaluation, should be ensured. The Committees highlight that return and reintegration measures should be sustainable from the perspective of the child’s right to life, survival and development. “

The paragraph 39 explains that: “States parties should adopt measures directed at facilitating the participation of all children in the context of international migration in the design, implementation, monitoring and evaluation of policies that could directly or indirectly affect them, as individuals or a group, **including in the fields of social policies and social services**. Initiatives should be taken to prepare girls and transgender children to participate actively, effectively and equally with boys at all levels of social, economic, political and cultural leadership. In countries of origin, the participation of children is paramount in developing policies on and in processes aimed at addressing drivers of the migration of children and/or their parents and developing policies in that regard. In addition, States should adopt measures aimed at empowering children affected by international migration to participate on different levels, through consultations, collaborations and child-led initiatives, and at ensuring that civil society organizations, including children associations and child-led organizations, can participate effectively in policy dialogues and processes on children in the context of international migration, at the local, national, regional and international levels. Any limitations on children’s freedom of association, including through legally establishing associations, should be removed.”

#### General Comment 23

The paragraph 47 of the General Comment 23 precises that: “With respect to **social security**, migrant children and their families shall have the right to **the** **same treatment** granted to nationals, insofar as they fulfil the requirements provided for by the applicable legislation of the State and the applicable bilateral and multilateral treaties. The Committees consider that in cases of necessity, **States should provide emergency social assistance to migrant children and their families regardless of their migration status, without any discrimination**.”

### UNCRC COBs

In this section, the Committee founds that some concluding observations addressed to State Parties have been included this concept.

Uzbekistan: Establish a multidimensional measure on child poverty **to inform the reform of the social protection system** to ensure that it adequately protects children in vulnerable situations and their families, including by overcoming institutional fragmentation, enhancing inter-agency coordination and interconnection between social, health-care and legal protection services, **strengthening the quality of social protection programmes** and establishing a network of professional social workers and community-based social services[[12]](#footnote-12)

Nigeria: The Committee wishes to emphasize that **the general lack of financial resources cannot be used as a justification for neglecting to establish social security programmes and social safety nets to protect the most vulnerable groups of children**. Accordingly, it is the opinion of the Committee that a serious review should be undertaken to determine the consistency of the economic and social policies being developed with the State party's obligations under the Convention**, in particular articles 26 and 27, especially with respect to the establishment or improvement of social security programmes and other social protection**.[[13]](#footnote-13)

Philippines: To **organize the collection of disaggregated data** on children with disabilities and develop an efficient and harmonized system for disability assessment in order to facilitate access for children with all types of disabilities to accessible services, including to education and health, **social protection** and support services, and inform its policies and programmes[[14]](#footnote-14)

Cambodia: **Prevent out-of-home placement of children without parental supervision**, particularly children whose parents have migrated, by providing adequate support to families in vulnerable situations through **child-sensitive social protection policies and services**[[15]](#footnote-15)

Djibouti: Taking note of targets 5.1 and 10.1 of the Sustainable Development Goals and recalling its previous recommendations, the Committee urges the State party to strengthen its measures to guarantee in practice the principle of non-discrimination to all children, in particular girls, children without birth registration, children with disabilities, children in street situations, refugee and migrant children, children who are victims of violence and abuse and children in the justice system, paying particular attention **to ensuring their equal access to** health, education, **social protection services** and freedom from violence[[16]](#footnote-16) & **Strengthen the implementation of the social protection strategies** and other measures in order to ensure that children and their families living in poverty, including migrant and refugee children, **receive adequate social and financial support and free, accessible services, without discrimination**.[[17]](#footnote-17)

Greece: **Strengthen family support and community-based services** as well as cooperation between social protection, education, health-care and other community services, while **allocating adequate resources** thereto, to prevent child abandonment and family separation & Organize the collection of data, disaggregated by age, sex, disability and region, and develop an efficient and harmonized system for early detection and intervention including for children with autism and developmental disorders, in order to facilitate access for children with all types of disabilities to education, health care, social protection and support services[[18]](#footnote-18)

Italy: The Committee notes **the reforms to the social protection system**, in particular the replacement of “inclusion income” (reddito di inclusione) with “citizenship income”, which may, however, progressively exclude those most at risk of poverty, such as those in temporary or low paid jobs, as well as minorities, women and children, owing to further labour market inequality. The Committee recommends that the State party adopt a comprehensive response to child poverty that guarantees **children’s access to adequate resources** through support to their parents’ participation in the labour market, **ensures children’s access to affordable quality services** and ensures children’s participation.[[19]](#footnote-19)

Spain: The Committee draws attention to target 1.3 of the Sustainable Development Goals on implementing nationally appropriate **social protection systems and measures for all** and urges the State party to strengthen comprehen**sive social protection policies for children and their families**, with a specific focus on children and families at risk and in most need of support. It further recommends that the State party:

(a) Simplify procedures for families with children in vulnerable situations to have quick and adequate access to social protection in diverse forms, such as financial aid, services and counseling, in addition to existing tax advantages;[[20]](#footnote-20)

Canada: Continue to **compile data on children with disabilities** to inform policies and programmes for them and develop an efficient and harmonized system for disability assessment in order to facilitate access for children with all types of disabilities to accessible services, including to education and health, **social protection** and legal services, in particular children living in rural areas and on reserves;[[21]](#footnote-21)

1. UNESCAP, *Why we need social protection*, 2021, p. 2, available at: <https://www.unescap.org/kp/2021/why-we-need-social-protection> [↑](#footnote-ref-1)
2. Is one of the five ESIF and the predominant central funding mechanism for projects focusing on social policy initiatives.

European Commission, *Tackling child poverty and social exclusion in the EU - How EU funding mechanisms can help*, p. 3, available at: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8087&type=2&furtherPubs=no> [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. UNICEF, *Integrated Social Protection Systems - Enhancing Equity for Children*, 2012, available at: <https://www.unicef.org/lac/sites/unicef.org.lac/files/2019-10/UNICEF_Social_Protection_Strategic_Framework_full_doc_std.pdf> [↑](#footnote-ref-4)
5. General Comment No. 5 (2003) on general measures of implementation of the Convention [↑](#footnote-ref-5)
6. W. Vandenhole, “Article 26: The Right to Benefit from Social Security”, in : A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghamans and M. Verheyde (Eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2007), p. 17 [↑](#footnote-ref-6)
7. Lamarche, Lucie, The Social Protection of Temporary Migrant Workers: An Evolutionary Process, 2013, p. 90 [↑](#footnote-ref-7)
8. W. Vandenhole, “Article 26: The Right to Benefit from Social Security”, in : A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghamans and M. Verheyde (Eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2007), p. 18 [↑](#footnote-ref-8)
9. Joint Statement (CEDAW, CED, CMW, CRC, CPT, CRPD, Corruption and Human Rights, 31 May 2021 [↑](#footnote-ref-9)
10. See also CRC General Comment No. 16, para. 55. [↑](#footnote-ref-10)
11. Joint Statement (CEDAW, CED, CMW, CRC, CPT, CRPD, Corruption and Human Rights, 31 May 2021, par. 19 [↑](#footnote-ref-11)
12. CRC/C/UZB/CO/5 Uzbekistan: Concluding Observations [↑](#footnote-ref-12)
13. CRC/C/add. 61/1996 Nigeria: Concluding Observations [↑](#footnote-ref-13)
14. CRC/C/PHL/CO/5-6 Philippines: Concluding Observations [↑](#footnote-ref-14)
15. CRC/C/KHM/CO/4-6 Cambodia: Concluding Observations [↑](#footnote-ref-15)
16. CRC/C/DJI/CO/3-5 Djibouti: Concluding Observations [↑](#footnote-ref-16)
17. CRC/C/DJI/CO/3-5 Djibouti: Concluding Observations [↑](#footnote-ref-17)
18. CRC/C/GRC/CO/4-6 Greece: Concluding Observations [↑](#footnote-ref-18)
19. CRC/C/ITA/CO/5-6 Italy: Concluding Observations [↑](#footnote-ref-19)
20. CRC/C/ESP/CO/5-6 Spain: Concluding Observations [↑](#footnote-ref-20)
21. CRC/C/CAN/CO/5-6 Canada: Concluding Observations [↑](#footnote-ref-21)