

Input to the thematic report of the United Nations High Commissioner for Human Rights on “Civil society space: COVID-19: the road to recovery and the essential role of civil society” to be presented at the 51st session of the Human Rights Council

13 December 2021

Submission by Child Rights Connect and Anita Danka, Independent Human Rights Law Expert

Child Rights Connect is an independent, non-profit organization founded in 1983 as the Ad Hoc Group for the drafting of the Convention on the Rights of the Child. Once the Convention was adopted, the network became the key strategic partner, with UNICEF, of the Committee on the Rights of the Child. Child Rights Connect is now one of the largest international child rights networks. Through its more than 90 member organizations, it has a worldwide reach with members from all regions reaching millions of children in around 185 countries. Through Child Rights Connect, children’s rights defenders, including children, can speak with one global voice in front of the international community and have a stronger influence on political decisions.

*Anita Danka*¹ is an Independent Human Rights Law Expert. Between 2008 and 2019 she worked at the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe. As a Human Rights Adviser/Monitoring and Response Coordinator she was responsible for organizing and leading assembly monitoring exercises observing assemblies in seventeen OSCE participating States and was the lead drafter of three ODIHR thematic assembly monitoring reports. She also co-developed a training curriculum on human rights compliant policing of assemblies and led relevant capacity building efforts for mid-ranking public order police commanders in five OSCE participating States and was the lead author of ODIHR’s Handbook on Monitoring Freedom of Peaceful Assembly (second edition).² Her relevant academic publications include *The right of children to be heard through peaceful protests*³ and *The role of communication in the human rights-based facilitation of peaceful protests*, published in the European Yearbook on Human Rights 2019 and 2017 respectively.

In recent submissions to the UN Human Rights Committee and the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (hereinafter: Special Rapporteur), the authors have analyzed the critical importance of freedom of peaceful assembly for children and the challenges children, including children climate defenders, face in the context of their exercise and enjoyment of freedom of peaceful assembly.⁴ Many of these challenges were exacerbated by the global health crisis due to the COVID-19 pandemic - and the measures taken by governments to prevent its spread - and

¹ The views expressed in this contribution do not necessarily represent the views of ODIHR or any organizations with which the author is affiliated.

² OSCE/ODIHR Handbook on Monitoring Freedom of Peaceful Assembly: Second Edition, 11 December 2020, accessible at: <https://www.osce.org/odihr/monitoring-peaceful-assembly>

³ Anita Danka, *The Rights of Children to be heard through peaceful protests*, European Yearbook on Human Rights (October 2019), accessible at: <https://intersentia.com/en/european-yearbook-on-humanrights-2019.html>

⁴ Anita Danka, *Submission to General Comment No. 37 on Article 21: right of peaceful assembly*, accessible at: https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle21/OTHER_Anita_Danka.pdf.

new obstacles emerged having serious implications to the enjoyment of children's participation rights, especially their freedom to assemble peacefully.

The impact of the COVID-19 pandemic to the exercise of freedom of peaceful assembly by children

As documented by the COVID-19 Civic Freedom Tracker of the International Center for Not-for-Profit Law, 147 countries have measures in place currently restricting the exercise of freedom of peaceful assembly,⁵ including by imposing total bans on public gatherings, ban on non-essential movement, curfews, social distancing, quarantines, among other measures. Although in many instances these measures could be necessary and proportionate for the protection of public health, there were also reported undue restrictions to silence political expression and some measures were arbitrary and having discriminatory impact on certain groups,⁶ including children and young people.⁷

In providing an urgent response to the pandemic, the initial focus of most States was to prioritize basic needs, at the expense of children's civil and political rights, as it has been highlighted by UNICEF.⁸ The COVID-19 pandemic has shown the weakness of the existing legal and policy frameworks that should guarantee children's full enjoyment of their civil and political rights and State responses to the pandemic have exacerbated **existing protection gaps and challenges**, as highlighted in the *Implementation Guide on the rights of child human rights defender*, inter alia:⁹ These include:

- lack of recognition, protection and empowerment of children as equal rights holders and an on-going resistance to the idea that children can or should defend human rights and speak up against adults' authority;
- generalised scepticism about children's perceived capacity and ability to understand and claim human rights;
- stigmatisation when defending human rights as they are perceived by some to be breaking social and cultural traditions that expect them to be passive players;
- minimum age restrictions to participate in peaceful assemblies or to form associations; burdensome notification/authorization procedures, especially for children; or legal prohibition for children to participate in assemblies, even when accompanied by their parents; and
- a lack of awareness of, or access to, mechanisms for participation in decision-making, support, information, and/or redress.

In the recent years, we have seen many human rights movements spearheaded by children all around the globe. Children have been and are at the forefront of climate change mobilisations worldwide and protests at the national level against social inequalities, gun violence, discriminatory laws, among others (e.g., Chile, Sudan, United States, India, Thailand, etc.).

⁵ Accessed on 28 July 2021 at: <https://www.icnl.org/covid19tracker/?location=&issue=2&date=&type=>

⁶ Human Rights Watch, *Covid-19 Triggers Wave of Free Speech Abuse*, accessible at: <https://www.hrw.org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse>.

⁷ Child Rights International Network, *How coronavirus makes us rethink youth protests*, accessible at: <https://home.crin.org/latest/how-coronavirus-makes-us-rethink-youth-protests>

⁸ UNICEF Programme Division - Human Rights Unit, *COVID-19 and the impact on children's rights: the imperative for a human rights-based approach* (April 2020): https://aa9276f9-f487-45a2-a3e7-8f4a61a0745d.usrfiles.com/ugd/aa9276_936b87ab482b4070aaa8e0987e06983a.pdf

⁹ Child Rights Connect, *The Rights of Child Human Rights Defenders: Implementation Guide* (December 2020): <https://www.childrightsconnect.org/wp-content/uploads/2020/12/final-implementation-guide-the-rights-of-child-human-rights-defenders-forweb.pdf>

States' emergency measures to prevent the spread of COVID-19 and measures to control peaceful assemblies during the pandemic, which have lacked in several instances compliance with the Convention on the Rights of the Child (UNCRC), have had a strong impact on children's enjoyment of their participation rights, their activities as child human rights defenders (CHRDs) and their movements.

“COVID-19 has significantly restricted children’s already limited access to civil society spaces and decision-making tables where they can express their opinions. Members of Children’s Parliaments and youth organizations are not able to meet each other, and protests are strictly restricted by the government. I am part of a youth-led organization calling for climate justice and we have found it difficult to deliver our voices to the decision-makers as we had to cancel all the protests and events we were preparing for prior to the pandemic.”, quote from a child human rights defender.¹⁰

As analysed by the Child Rights International Network, **some emergency measures expressly discriminated against children**, such as curfews which applied only to children, for instance in [Russia](#), [Colombia](#) and [Bosnia and Herzegovina](#).¹¹

In Thailand, child human rights defenders have been very visible in peaceful protests that have taken place in the past 12 months amid the COVID-19 pandemic, calling for democracy, modernizing education, reform of the monarchy, among other issues.¹² Public authorities when dispersing public gatherings which they deemed in breach of COVID-19 restrictions,¹³ used water cannons, tear gas, rubber bullets.¹⁴ Sweeping arrests and excessive use of force by the police against children have also been reported, as well as the lack of due process by juvenile courts, including failure to investigate the use of force and in taking into account the best interest of the child.¹⁵ Similar use of less-lethal weapons and other crowd control methods have also been seen in protests taking place in Chile¹⁶ and Belarus.¹⁷ **Children are among the groups that face an increased risk from the use of certain types of less lethal weapons.** For example, children with asthma, obstructive airway disease or bronchopulmonary disease are particularly vulnerable to chemical irritants such as tear gas.¹⁸ According to the American Academy of Paediatrics”. A child's smaller size, more frequent number of

¹⁰ Quote from consultations with children on the impact of COVID-19 on the advancement of the Sustainable Development Goals, for more information see: <https://www.childrightsconnect.org/empowering-children-to-contribute-to-un-processes-on-sdgs/>

¹¹ Child Rights International Network, *How coronavirus makes us rethink youth protests*, accessible at: <https://home.crin.org/latest/how-coronavirus-makes-us-rethink-youth-protests>

¹² Human Rights Watch, *Thailand’s ‘Bad Students’ are Rising Up for Democracy and Change*, accessible at: <https://www.hrw.org/news/2020/09/17/thailands-bad-students-are-rising-democracy-and-change>

¹³ OHCHR, *UN experts urge Thai government to allow peaceful protests and release unconditionally those arbitrarily detained*, accessible at: <https://ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26408&LangID=E>

¹⁴ See Southeast Asia Globe, *Facing tear gas, Thailand’s child protestors find safety in protection team*, accessible at: <https://southeastasiaglobe.com/thailands-youth-protestors/>; UNICEF, *UNICEF calls for the protection of children and young people amid protests in Thailand*, accessible at: <https://www.unicef.org/thailand/press-releases/unicef-calls-protection-children-and-young-people-amid-protests-thailand>

¹⁵ Amnesty International Thailand, *Thailand: Children rights to protest, and their rights must be protected*, accessible at: <https://www.amnesty.or.th/en/latest/news/896/>

¹⁶ Univision, *Más de 1,000 menores de edad detenidos en 4 meses de protestas en Chile*, accesible at: <https://www.univision.com/noticias/america-latina/mas-de-1-000-menores-de-edad-detenido-en-4-meses-de-protestas-en-chile>

¹⁷ Amnesty International, *Belarus: Crackdown on Children*, accessible at: <https://www.amnesty.org/download/Documents/EUR4936822021ENGLISH.PDF>

¹⁸ <https://www.hkmj.org/system/files/hkmj198171.pdf>

breaths per minute and limited cardiovascular stress response compared to adults magnifies the harm of agents such as tear gas.”¹⁹ Other police tactics frequently deployed during public gatherings can also disproportionately affect children, such as the use of containment or kettling, where people are often held for prolonged periods with no access to food, water or toilets.²⁰

Law enforcement officials should give special consideration to children and others who are particularly vulnerable, in accordance with the principle of precaution²¹ and should exercise particular restraint with regard to the use of force when children may be affected. Under article 19 of the UNCRC, States have the obligation to take **all the necessary measures to protect children from harm, including by ensuring the safe exercise by children of their right to peaceful assembly.**²²

Girls have been some of the leading voices calling for climate and environmental justice around the world. The Special Rapporteur²³ has highlighted the impact of the COVID-19 pandemic to exacerbate gendered and intersecting inequalities²⁴. Since **girls, along with women** continue to carry a disproportionate share of unpaid care and domestic work globally,²⁵ **their time, mobility and opportunities to engage in activism are often reduced and the pandemic puts increasing demands on women and girls to care for families and the sick.**²⁶

With the rapid shift to the digital spaces, **States have imposed restrictions on online activities²⁷, in some cases, cutting internet access altogether**, to further curtail freedom of expression, peaceful assembly, right to privacy and civic space. This has had a critical impact on children’s ability to mobilise online, access information on the pandemic and stay connected. **The digital divide is also exacerbating inequalities and leaving behind the most vulnerable children** who are unable to exercise their civil and political rights online.²⁸

The financial viability of civil society organizations, especially local organizations and community-based groups, has been and continues to be under threat of losing important sources of funding as a result of the economic downturn and shifting government priorities and budgets. This undermines front line efforts by civil society organisations to defend civil society space, including empowering all

¹⁹ Kraft, C. A., “AAP Statement in Response to Tear Gas Being Used against Children at the U.S. Southern Border”, American Academy of Paediatrics, 26 November 2018, and <https://www.medicalbag.com/home/medicine/aap-responds-to-tear-gas-use-at-us-mexico-border/>

²⁰ Omega / ODIHR Guide on Law Enforcement Equipment Most Commonly Used in the Policing of Assemblies, <https://www.osce.org/files/f/documents/4/7/491551.pdf>

²¹ https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf para. 2.7

²² Child Rights Connect, *Implementation Guide on the rights of child human rights defender* (2020), accessible at: <https://www.childrightsconnect.org/wp-content/uploads/2020/12/final-implementation-guide-the-rights-of-child-human-rights-defenders-forweb.pdf>

²³ *Celebrating women in activism and civil society: the enjoyment of the rights to freedom of peaceful assembly and of association by women and girls*, A/75/184, <https://undocs.org/A/75/184>

²⁴ OHCHR, *Responses to the COVID-19 could exacerbate pre-existing and deeply entrenched discrimination against women and girls*, say UN experts (20 April 2020).

²⁵ UN-Women, *Progress on the Sustainable Development Goals: the gender snapshot 2019*.

²⁶ United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), Secretary-General’s “Policy brief: the impact of COVID-19 on women”.

²⁷ <https://www.savethechildren.net/news/covid-19-access-full-mobile-data-and-telecommunications-myanmar-and-bangladesh-essential-save>

²⁸ Save the children, SOS Children’s Villages International and Child Rights Connect, *Joint submission for the consultation on the HRC resolution on civil society space (ahead of 44th session)*, (May 2020): <https://www.childrightsconnect.org/wp-content/uploads/2020/07/joint-submission-hrc-resolution-on-civil-society-space.pdf>

children as civil society actors.²⁹ It also undermines opportunities for children to establish child-led organisation and undertake advocacy.

Article 15 of UNCRC affirms that children enjoy the right to freedom of peaceful assembly on an equal footing with adults and that age is not a barrier to the recognition, application and enforcement of this right.³⁰ For children, this right is of particular importance as they lack full legal capacity, political power, they are economically weak and constitute one of the most vulnerable groups in society.³¹ Unlike adults, children cannot vote and are not represented in traditional State structures.³² Peaceful assemblies are an important way for children's voices to be heard, enabling them to participate in social and political life, particularly on matters affecting them. The political aspect of the right to peaceful assembly is also crucial for children as a group and their right to quality education is not threatened but furthered by their human rights activism.³³

The freedom of peaceful assembly in the UNCRC not only ensures that children are not excluded from enjoying this right, but also upholds the significance of its practical enjoyment for children in a child-focused manner.³⁴ Therefore, States should not only remove legal and practical barriers that prevent children from exercising this right, but should also ensure that legislation, policies and practices empower children to safely exercise their right to freedom of peaceful assembly online and offline.

In the context of crisis and emergencies, States can adopt exceptional measures to protect public health that may restrict certain human rights. These restrictions must meet the requirements of legality, necessity and proportionality, and be non-discriminatory as established by the International Covenant on Civil and Political Rights (ICCPR) and the UNCRC. Such decisions should be child-sensitive, transparent, and communicated to children.³⁵

Good practices and recommendations

"[...] although protests and meetings are restricted, we can express our thoughts and create social changes through various methods, such as social media campaigns, writing letters to politicians, starting a petition, creating videos etc.", quote from a child human rights defender.³⁶

In adapting to restrictions of movement and to peaceful assembly in a large number of countries, several good practices have emerged to facilitate the right of children to be heard; assemble online; among others. Some practices include:

- Children have found innovative ways to stay connected, support each other and assemble. For instance, climate activists have identified a variety of alternatives to protesting in person,

²⁹ *Ibid.*

³⁰ Claire Breen, "Article 15 The Rights to Freedom of Association and Peaceful Assembly", in *The UN Convention on the Rights of the Child A Commentary* (pp. 517-550). Oxford Commentaries on International Law (2019), p518

³¹ Anita Danka, "The Rights of Children to be heard through peaceful protests" in *European Yearbook on Human Rights* (October 2019), p. 408.

³² *Ibid.* Anita Danka, p. 408.

³³ According to Articles 28 and 29 of the Convention of the Rights of the Child, the right to quality education of children should be directed to the development and respect for human rights, preparation of children for responsible life in a free society, development of respect for the natural environment.

³⁴ *Ibid.*

³⁵ Child Rights Connect, *Implementation Guide on the rights of child human rights defender* (2020), p. 53, accessible at: <https://www.childrightsconnect.org/wp-content/uploads/2020/12/final-implementation-guide-the-rights-of-child-human-rights-defenders-forweb.pdf>

³⁶ Quote from consultations with children on the impact of COVID-19 on the advancement of the Sustainable Development Goals, for more information see: <https://www.childrightsconnect.org/empowering-children-to-contribute-to-un-processes-on-sdgs/>

including joining online strikes;³⁷ webinars; mass call-ins; online storytelling; visual protests;³⁸ and *cacerolazos* (banging on pots and pans or making music) from windows, doors or balconies.³⁹

- States created spaces to listen to children’s views during the pandemic. For example, several countries organized press conferences specifically targeting children, including Denmark, Norway, the Netherlands, New Zealand and Sweden, enabling a meaningful dialogue between policy-makers and children.⁴⁰
- Civil society organization established mechanisms to promote children’s safe exercise of their right to peaceful assembly. For instance, in Thailand, “Child in Mob” volunteers patrolled demonstrations, distributing flyers and wristbands to children for their safety and providing them with psychological, legal and physical protection.⁴¹

In April 2020, the United Nations Committee on the Rights of the Child warned of the grave physical and psychological effects of the pandemic on children. The Committee called on states to take a child rights-based response. As emphasized by the Committee, the UN Special Representative of the Secretary-General on Violence Against Children, UNICEF and other UN actors, it is critical to ensure that children participate in decision-making processes around the pandemic so that they can contribute towards shaping the post-COVID-19 world. Consulting children is not enough; now, more than ever, there is a need to uphold children’s civil and political rights in order to ensure that their needs and perspectives are taken into account in response and recovery efforts.

Against this backdrop, we would like to make the following **recommendations**:

We encourage the Special Rapporteur to:

- **Develop authoritative guidance for States on children’s exercise of their right to freedom of peaceful assembly, including in emergency situations**, to enable the full enjoyment of this fundamental freedom by children and that any measures to enable or limit the exercise of this right are in compliance with the UNCRC and ICCPR.

We encourage States to:

- **Use COVID-19 responses and recovery plans to bring existing national laws and policies in line with international human rights standards and commitments related to children’s rights to freedom of peaceful assembly, online and off-line**, including reaffirming children’s freedom of peaceful assembly (which entails both the right to organize as well as participate in assemblies peacefully) in national law and thoroughly assessing and eliminating existing legal barriers, including age-based discriminatory laws and policies with adverse impact on the free exercise and full enjoyment of these fundamental freedoms by children. States have a positive obligation to foster a safe and enabling environment for children to exercise this right effectively, whether at a school, a public setting or some other context.⁴²

³⁷ <https://www.energylivenews.com/2020/03/13/greta-thunberg-calls-for-digitalstrike-amid-coronavirus-outbreak/>

³⁸ https://350.org/coronavirus-organizing/?_ga=2.4557239.504213006.1586189498-1545098633.1586189498

³⁹ Child Rights International Network, *How coronavirus makes us rethink youth protests*, accessible at: <https://home.crin.org/latest/how-coronavirus-makes-us-rethink-youth-protests>

⁴⁰ Submission, accessible at: https://ohchr.org/Documents/Issues/Children/ReportProtectionRightsChild/UN_bodies_other_entities/osrsg-violence-against-children.docx

⁴¹ See Southeast Asia Globe, *Facing tear gas, Thailand’s child protestors find safety in protection team*, accessible at: <https://southeastasiaglobe.com/thailands-youth-protestors/>

⁴² Child Rights Connect, *The Rights of Child Human Rights Defenders: Implementation Guide*, p.52 (December 2020): <https://www.childrightsconnect.org/wp-content/uploads/2020/12/final-implementation-guide-the-rights-of-child-human-rights-defenders-forweb.pdf>

- Ensure that **any restrictions on the exercise by children of their right to freedom of peaceful assembly, including through emergency measures, are lawful, necessary, proportionate and non-discriminatory**, as provided by international human rights law, and that any processes that may lead to restrictions on children’s exercise of this right seek children’s views and give them due weight and are transparent and accessible to children. **Justifications for any restrictions must be rights-based and proactively explained to children in a child-friendly manner.**
- Ensure that children have **access to age-appropriate, gender-sensitive and timely information without discrimination** in a language and format they can understand about COVID-19, public health emergency measures, and how they can exercise their participation rights in such a context. Special attention should be paid to facilitate the exercise of the participation rights by girls, including by developing effective information campaigns to combat discriminatory social norms, attitudes and harmful stereotypes about women’s and girls’ roles and capabilities.
- **Ensure in law and in practice the right to peaceful assembly online for children**, by ensuring open, free and accessible internet. Children’s participation, assembly and association in the online environment should not in and of itself result in negative consequences to those children, such as exclusion from a school, restriction or deprivation of future opportunities or creation of a police profile. Such **participation should be safe, private and free from surveillance by public or private entities**. States should support children’s participation online, including by **facilitating the creation of specific digital spaces, and ensure their safety.**⁴³
- Provide adequate measures to **ensure children’s rights to be heard during public health emergencies**, including by creating child-friendly spaces for children to contribute to decision-making, online and offline. States should recognise that a child’s engagement in public affairs is a matter affecting the child and should seek the views of CHRDs and take them seriously on issues that are of public interest and may not affect the child directly, bearing in mind that there are very few, if any, child-neutral policies or programmes.
- Ensure that **COVID-19 recovery and prevention measures are designed, developed, implemented and assessed with the participation of children in a child-friendly manner.**
- Ensure that **law enforcement authorities are sufficiently trained in how to facilitate assemblies involving children** while upholding human rights and protecting the best interest of the child and their rights and ensure that officials give special consideration to children and others who are particularly vulnerable, in accordance with the principle of precaution. **Ensure that law enforcement officials exercise particular restraint with regard to the use of force when children may be affected, prioritising non-violent means for the resolution of conflicts and using force only as a last resort and in accordance with the principles of legality, necessity, proportionality and non-discrimination.**
- Ensure access to an **effective remedy** for any undue limitations of children’s freedom of peaceful assembly by law enforcement, local or other authorities and raise awareness about internationally recognized good practices in this regard.

We encourage donors:

- **To continue playing a key role in promoting an enabling environment for civil society, including through direct funding to local civil society actors to increase their operational capacity.** They should prioritise the inclusion of civil society actors who represent under-represented groups in society, including children, through direct funding to child-led initiatives, children’s rights organizations and coalitions.

⁴³ CRC General comment No. 25 (2021), para. 64-66.

We encourage international and regional human rights institutions and mechanisms:

- To continue to support States in safeguarding civic space and developing and implementing national laws and policies guaranteeing all children’s civil and political rights enshrined in the CRC.
- Ensuring that children’s civil and political rights are a key priority at the regional and international levels, through the mainstreaming of children’s rights and the development of safeguarding and child-friendly procedures to enable children’s participation in intergovernmental forums and channels.
- Ensure that children can continue to participate in United Nations mechanisms and multilateral institutions, through different means, including in decision-making related to COVID-19.