



# **Children and Access to Justice in the Agenda for Sustainable Development**

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# Introduction

Over 900 million people live in extreme poverty. Half of these are children. Child poverty is a universal challenge, as the economic recession has shown. While in sub-Saharan Africa alone, 247 million children are deprived of their basic rights, poverty still affects one in every four children in the world's richest countries, and there are 26 million children at risk of poverty or social exclusion in the EU. Child poverty, however, is not just about lack of economic resources but involves multiple aspects of life, including access to food, health services, clean water, education or shelter. It is about lack of access to opportunities that would trigger development and about lack of security and protection from risks and vulnerability.

Access to justice is at the core of guaranteeing children's rights, but legal systems often make it difficult or impossible for children to obtain redress for rights violations. Children living in poor households are most vulnerable when they need to come into contact with the justice system as victims, witnesses and offenders, or when judicial or administrative intervention is required for their custody or protection. They are particularly exposed to denial of their rights and are at additional risk of exploitation. At the same time, it is harder for the poor and marginalised to seek and obtain redress, and consequently they may fall further into poverty. Failure of legal systems to provide protection from crime and to ensure access to justice, including for children, hinders development and thwarts foreign investment.

The UN Sustainable Development Goals (SDGs) (officially known as *Transforming our world: the 2030 Agenda for Sustainable Development*) have the potential to make an important contribution to the empowerment of children in the context of eradication of poverty and sustainable development based on international legal norms and standards. Goal 16, in particular, provides a unique opportunity to boost the realisation of the benefits of the Agenda for children, by ensuring that they are better assisted and protected by justice systems, and by strengthening the rule of law efforts regarding justice for children and full respect of their rights.

This briefing paper illustrates how the UN Post-2015 Development Agenda can improve access to justice and the economic and social wellbeing of children, and discusses some of the challenges ahead. Lawyers involved in advocacy, law reform, drafting of new legislation, legal education and providing legal assistance and representation have a huge opportunity to support and contribute to the empowerment of children out of poverty cycles. More generally, the legal community can play a key role in the implementation of the SDGs by both informing the rigour of the data collected, through analysis and discussion of the legal concepts involved in measurement, and by building on the data to develop solid arguments about law reform that will benefit sustainable development.

# Chapter 1: Ensuring Sustainable Development through Access to Justice

## 1.1 The Post-2015 Agenda and access to justice

In September 2015, members of the United Nations unanimously adopted the new Sustainable Development Agenda that will succeed the 2000 Millennium Development Goals (MDGs) and will direct international aid and development for the next 15 years.<sup>1</sup> The Agenda recognises the relationship between poverty reduction and sustainable development, on the one hand, and respect for human rights, the rule of law, justice and equality, on the other. Justice systems can be powerful tools in breaking the cycle of poverty. Accordingly, the Agenda includes law and justice among the essential ingredients of sustainable development and eradication of poverty.

Access to justice for all is a key priority for development under the new Agenda and is incorporated, for the first time, as a standalone goal. Goal 16 sets out to: ‘[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.’

At the same time, the Post-2015 Development Agenda emphasises the growing interest in and concern by the international community about the protection and empowerment of children, as part of the global resolution to create the conditions for achieving their full human potential. Under the Agenda, people who are vulnerable must be empowered, and children are specifically mentioned among these. The Agenda also acknowledges that ‘children and young women and men are critical agents of change’ and predicts that the new goals will provide a platform to channel their infinite capacities.<sup>2</sup>

Access to justice is a critical precondition for the effective functioning of institutions governed by the rule of law, a fundamental right in itself and an essential prerequisite for the realisation of other human rights, including the rights of members of vulnerable groups. Access to justice is of core importance for the protection of the rights of children, especially protection from discrimination, violence, abuse and exploitation, and for ensuring their best interest in all actions involving or having an impact on them.

### Goals, targets and indicators

The Agenda for Sustainable Development contains goals and targets that will be implemented in the light of indicators.

- *Goals* are framed at a high and general level – for example, Goal 16.
- *Targets* are more specific. They concern areas in which states should focus and things they should achieve in order to fulfil the goals – for example, ‘By 2030, provide legal identity for all, including birth registration’.
- *Indicators* are grounded on specific actions or outcomes that can be measured and will reveal whether states have succeeded in achieving the goals and targets – for example, ‘Percentage of young women and men aged 18–24 who experienced sexual violence by age 18’. Indicators will be very contentious not only in terms of the definition of an appropriate indicator, but also with regard to what appropriate percentages indicate progress in relation to any given indicator.

1 General Assembly, Draft resolution referred to the United Nations summit for the adoption of the post-2015 Development Agenda by the General Assembly at its sixty-ninth session: *Transforming our world: the 2030 Agenda for Sustainable Development*, UN doc A/70/L.1, 18 September 2015.

2 *Transforming our world*, above n 1, para 51.

## 1.2 The importance of monitoring implementation

The inclusion of a specific goal (and targets) addressing institutional and access to justice issues within a sustainable development framework is hugely significant because, by unanimously adopting the Agenda, governments have agreed to prioritise its elements in both domestic and foreign policies. The Agenda also comprises various commitments aimed at offsetting the detrimental effects of poverty on children and empowering them in the context of sustainable development. Although the nature of the commitments is not legally binding, but rather voluntary and aspirational, the Agenda specifies a number of procedures for follow up and review, including the development of global and national indicators capable of gauging progress towards the realisation of the goals.

The Post-2015 Agenda has therefore prompted high expectations around monitoring and measurement of progress. The indicator framework introduces a concrete mechanism based on political and civic peer pressure for holding governments to account, and thus endows the aspirational commitments of the Agenda with some 'teeth'. The follow-up mechanisms of the Agenda shift the focus from record-keeping of inputs and efforts aimed at ending poverty and ensuring sustainable development, to the measurement of outcomes and the concrete impact of reforms, policies and programmes on individuals.

As such, the Agenda has a very strong potential to bringing positive changes in the alleviation of child poverty and in making children's access to justice and rights a reality. The extent to which the aspirational vision of the goals will be achieved in practice, however, is highly dependent on the identification of global and national indicators that capture the essence of the goals and targets, and are meaningful to measuring progress. The effective implementation of Goal 16 could make the difference between triggering the transformative potential of the Agenda and the SDGs being just a formal, tick-boxing activity.

# Chapter 2: Securing Justice for Children

## 2.1 The relevance of law and justice for the empowerment of children in the context of sustainable development

To what extent can the UN Post-2015 Sustainable Development Agenda make a difference in drawing children out of poverty cycles and trigger their human development? What part can lawyers play in the concrete delivery of the content of the Agenda in this regard?

As already noted, the protection and empowerment of children and youth are placed at the core of the new Agenda, and are considered essential elements of the effective achievement of the SDGs. The Agenda has around two dozen targets that are specifically relevant to children.<sup>3</sup> Additionally, the breakdown of data by age will allow information regarding children to be specifically isolated, and therefore highlight the impact and success of the efforts as they affect children. In addition, other broadly formulated goals and targets are relevant, because data disaggregation by age can reveal trends in wider progress regarding children and enable comparisons between children in different age groups.

This briefing paper analyses and discusses seven out of more than 20 indicators currently suggested by the Inter-agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs, or ‘the Expert Group’)<sup>4</sup> to measure progress in the achievement of Goal 16. It takes seven areas that are of particular relevance to lawyers and important to the contribution they can make with regard to the realisation of children’s needs, addressing them in the order they arise in the SDGs’ targets:

- violent discipline of children;
- victims of human trafficking;
- victims of sexual violence;
- crime reporting rate;
- unsentenced detainees;
- unregistered children at birth;
- experience of discriminatory behaviour.

The indicators discussed below are drawn from the proposed global indicators’ list that has been agreed by the Expert Group. The technical information reported and discussed below concerning the availability of data in relation to the indicators is taken from the documentation available on the Expert Group website.<sup>5</sup>

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<sup>3</sup> *Transforming our world*, above n 1, para 23. See in particular Goals 1 to 5, 8, 11 and 16 and some of their targets.

<sup>4</sup> See the Glossary for information about the Expert Group.

<sup>5</sup> Information is available at <http://unstats.un.org/sdgs/iaeg-sdgs/metadata-compilation>. Note also that at the time of writing the indicators for 16.2.3 and 16.3.1 are those that are proposed but have not yet been finalised.

## 2.2 Target 16.2: End abuse, exploitation, trafficking and all forms of violence against and torture of children

This target focuses on children and addresses, in particular, the needs of those subjected to different forms of violence and abuse. The very broad coverage of Target 16.2, comprising ‘abuse, exploitation, trafficking and all forms of violence against and torture of children’, has channelled the discussions around global indicators for this target towards the identification of the most meaningful ones to measuring progress in the elimination of the gravest forms of violence and abuse of children. It complements Target 16.1, which more broadly calls on governments to ‘significantly reduce all forms of violence and related death rates everywhere’.

*Indicator 16.2.1: Percentage of children aged 1–17 who experienced any physical punishment and/or psychological aggression by caregivers in the past month*

|   |  |
|---|--|
| <b>What the indicator covers: punishment of children by those who take care of them</b>     | <p>The indicator aims to cover practices of violent discipline on children in the form of physical punishment, including mild forms of physical discipline, and psychological aggression. The consequences of violent discipline that the indicator is intended to capture range from immediate effects to long-term damage that children take forward and suffer into adulthood. Such violence may take place at schools, in institutions, at homes or at work, and caregivers include at a minimum parents, guardians, teachers, social workers, etc. Obtaining redress in such cases is difficult because claims are not always justiciable and may be culturally acceptable in certain contexts. The indicator will raise awareness on practices of violent discipline involving children, with the longer-term purpose of triggering interventions necessary to strengthen respect for children’s rights.<sup>6</sup></p> |
| <b>Data: how do we find out about ways children are treated by those who care for them?</b> | <p>Household surveys can provide data that tell us about physical punishment and psychological aggression meted out to children. Since 2005, UNICEF has collected this type of data through the Multiple Indicator Cluster Survey (MICS), which includes questions on the types of violent discipline inflicted on children, such as less violent forms of discipline, psychological aggression and physical punishment. Fully comparable data are available for 60 low- and middle-income countries. However, more data can and should be obtained by using national household surveys.</p> <p>To identify discriminatory practices (including gender inequality issues) and differences – which will enable more targeted and effective strategies to reduce harm against specific groups of children – it should be possible to disaggregate data by age, sex, region and population group.</p>                             |

Previous versions of indicator 16.2.1 referred to children aged 1–14 years, but the age limit was eventually increased to reflect international human rights obligations and standards concerning children, especially those under the UN Convention on the Rights of the Child and the ILO (International Labour Organization) Conventions concerning children.

There are, however, some practical challenges that the indicator and the way it is measured raise, which can weaken its effectiveness. They are mainly related to the methodology employed for collecting data, that is, household surveys. While the indicator aims to measure practices of violent discipline suffered by children, surveys will be actually completed by adult members of the family, who will also filter the relevant information. In replying to survey questions there is therefore a strong risk that practices of violent discipline in contexts other than the family will get over-reported, compared to physical punishment within the domestic environment.

There is also a difficulty in relation to the frequency of measurements. Household surveys are costly and complex and they generally take place every three or five years. Therefore, when measuring progress against this indicator, it is important to match data obtained from survey responses against

<sup>6</sup> See case of abuses against aboriginal people in Canada’s school system for the purpose of suppressing their cultural identity discussed in J Beqiraj and L McNamara, *International Access to Justice: Legal Aid for the Accused and Redress for Victims of Violence* (A Report by the Bingham Centre for the Rule of Law 2015/05), International Bar Association, October 2015, p 32.



and complement them with information from other sources, such as support helplines for children, studies carried out by NGOs or academia, or data gathered by lawyers and/or their associations in their day-to-day practice.

| <i>Indicator 16.2.2: Number of victims of human trafficking per 100,000 population, by sex, age group and form of exploitation</i> |   |
|--|---|
| <b>What the indicator covers: victims of trafficking of human beings</b>   | <p>Human trafficking represents a major violation of human rights and dignity, and has a serious impact on health, personal security and economic and social opportunities. One-third of detected victims of human trafficking are children and two out of three victims are girls.<sup>7</sup> Victims of human trafficking are often forced to commit or assist in the commission of criminal and/or illicit activities, and thus find themselves in a doubly disadvantaged status: they are both victims and offenders. Because of fear of exposure as offenders (including in the context of irregular migration), they face substantial difficulties in gaining access to justice in practice, and in obtaining redress as victims.</p> <p>For the purposes of this indicator, trafficking is defined according to the UN Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the UN Convention against Transnational Organised Crime. It comprises activities, such as recruitment, transport, transfer, harbouring or receipt of persons, for the purpose of exploitation, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power, or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. Exploitation may occur for different reasons, including sexual exploitation, such as prostitution or pornography; economic exploitation, such as forced labour, slavery or servitude; exploitation for the purpose of removal of organs; or child recruitment as soldiers.</p>   |
| <b>Data: how do we find out about victims of human trafficking and what kind of information is available?</b>                      | <p>The indicator is calculated as the number of victims of trafficking per 100,000 persons. The indicator is mainly derived from national administrative and judicial data obtained from records maintained by competent national authorities, such as police, labour inspectors, health care providers, educational institutions, national human rights institutions and ombudspersons, including civil society organisations.</p> <p>At the international level, the specific number of detected victims per country has been collected by the United Nations Office on Drugs and Crime (UNODC) since 2007 and is published every two years as part of the Global Report on Trafficking in Persons, comprising data from 130 countries. Additional resources include data collected by the World Health Organization, ILO, UNICEF, UNHCR, the US Department of State's Trafficking in Persons Report and the IOM Trafficked Migrants Assistance Database.</p> <p>As trafficking takes place by definition along secret channels, in order to be meaningful, data for this indicator must cover both detected (ie, reported cases) and undetected victims. Measuring the hidden part of trafficking in persons, however, is not straightforward.<sup>8</sup> In 2014, the UNODC developed a methodology (currently in testing phase) for calculating the estimated number of non-detected victims.</p> <p>The suggested breakdown of data for this indicator is by age, sex and other forms of exploitation. Existing data already show that trafficking in persons affects certain categories of individuals more severely: 70 per cent of detected victims of human trafficking are females – adult women (49 per cent) and girls (21 per cent). A useful supplementary breakdown of data would include information about the nationality, ethnicity, minority or indigenous status of the victims and the traffickers, the geographical location, and the type of perpetrator – for example, private enterprise, individual, etc.</p> |

Although part of a target that specifically addresses the needs of children, the indicator refers to victims of trafficking in general. Disaggregation of data by age and sex, however, would allow isolating information concerning boys and girls specifically, and assessing trends regarding their trafficking situation. Since available data show that trafficking in persons has a particularly negative impact on women and girls, monitoring trends in these regards would also enable addressing and correcting gender equality issues in the context of the SDGs, and would provide some evidence with regard to progress in the achievement of Goal 5 (gender equality and empowerment of women and girls). Additionally, data collected for the purposes of this indicator could be used to monitor Goal 8 (promote decent work for all), and – in the context of Goal 16 – Target 16.1 (violence and death rates), and Target 16.4 (combat all forms of organised crime). Victims of organised crime, in particular, are among the most invisible in official statistics because of the hidden channels through

<sup>7</sup> UNODC, Human trafficking report 2014, [www.unodc.org/documents/data-and-analysis/glotip/GLOTIP\\_2014\\_full\\_report.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf).

<sup>8</sup> Eg Respondent Driven Sampling and Network Scale-up Method.

which organised crime structures operate, so it is vital that such abuses are monitored within the framework of the SDGs to ensure that no one is left behind.

An important limitation regarding this indicator relates to the difficulty of estimating the real scale of the trafficking phenomenon, because there is no sound methodology for calculating hidden flows. However, as the indicator relies mainly on reports of individual cases, it is very important that national systems ensure effective access to justice for victims of trafficking, including by raising awareness among victims about their rights, increasing access to information, facilitating access to legal aid and assistance, as well as by coordinating legal services with health services and social assistance. Lawyers and civil society organisations, alongside governments, can have a positive impact on the legal empowerment of victims of trafficking and on strengthening existing legal frameworks to enable more victims to come forward and consequently to uncover exploitative practices.

| <i>Indicator 16.2.3: Percentage of young women and men aged 18–24 who experienced sexual violence by age 18</i> |  |
|---|--|
| <b>What the indicator covers: victims of sexual violence</b>  | This indicator has been proposed by UNICEF. The Convention on the Rights of the Child establishes the right of children to freedom from all forms of violence (Article 19). <sup>9</sup> However, instead of tackling all forms of violence against children, both physical and psychological, the indicator captures only one of the gravest forms of violence: sexual violence. <sup>10</sup> The rationale for the more restrictive scope of this indicator is that sexual violence against children is considered a good indirect or approximate measure (proxy indicator) of the phenomenon of violence, given the difficulty of having an indicator capable of capturing violence in its different forms. Sexual violence reflects a key aspect of the changes that the Post-2015 Development Agenda should elicit in view of achieving the ambition of Target 16.2 to end all forms of violence against children. |
| <b>Data: how do we find out about victims of sexual violence and what kind of information is available?</b>     | Data for this indicator have been collected since the late 1990s in low- and middle-income countries through household surveys such as demographic and health surveys. These allow disaggregation of data by age, marital status, place of residence and wealth range (wealth quintiles).  |

One of the main challenges in drawing conclusions with regard to the level of global progress in relation to this indicator is the lack of comparable data across jurisdictions. States often rely on various methodologies and survey designs and on different definitions of sexual violence in their data collection efforts. UNICEF has fully comparable data for the percentage of young women aged 18–24 years who report having experienced sexual violence by age 18 for approximately 43 countries; data regarding young men aged 18–24, however, are available only for approximately five countries.<sup>11</sup>

In addition, low levels of reporting experiences of sexual violence, especially among boys and men, can seriously hamper the significance of the indicator and its influence in ensuring that no one is left behind in the efforts undertaken by states to deliver the SDGs. The breakdown of data for this indicator by sex provides a very useful tool for analysing gender equality issues.

Placing this indicator in the context of Goal 16, which is aimed at ensuring access to justice for all, confirms the importance of putting in place legal procedures and protective measures that take into account the different risks, hardships and challenges that boys and girls face when they come in contact with the law. Lawyers can successfully contribute to fighting gender-based violence, including by using their professional skills in strategic litigation to draw attention to widespread practices

9 See also Committee on the Rights of the Child, General Comment No 13, doc CRC/C/GC/1, 18 April 2011.

10 A comprehensive indicator measuring all forms of violence has been proposed by the special representative of the SG on violence against children, WHO and UNODC. See compilation of metadata reported in October 2015, available at <http://unstats.un.org/sdgs/files/Metadata%20Compilation%20for%20SDG%20Indicators%2023%20October%202015%20Update.pdf>.

11 <http://data.unicef.org/child-protection/sexual-violence.html>.

of violence mirroring discriminatory patterns in the society or cultural prejudice, or by training and supporting community groups to put pressure on governments to implement reforms of the legislation.

## **2.3 Target 16.3: Promote the rule of law at the national and international levels and ensure equal access to justice for all**

This target directly addresses access to justice and rule of law issues. Access to justice is essential to the establishment and maintenance of the rule of law because it operates as an empowering instrument, enabling the most vulnerable groups to have their voices heard and to exercise their rights. Access to justice is both a right in itself and an essential condition for the realisation of other civil, cultural, economic, civil and political rights. It serves both a redress function when public institutions and private parties violate laws and rights, and a preventive function against repeated violations of rights, including through increased public trust in the justice system.

Ensuring ‘equal access to justice for all’ involves different stages of the process of obtaining a solution to legal problems, whether civil, criminal or administrative. These range from the existence of rights enshrined in laws, and awareness and understating of such rights, to access to dispute resolution mechanisms as part of the formal and informal justice system. Effective access to justice includes the availability of, and access to, counsel and representation, and the ability of justice mechanisms to provide fair, impartial and enforceable solutions.<sup>12</sup>

Barriers to access to justice affect more severely poor and marginalised groups, women and children. ‘Equal access to justice for all’ is hindered by different groups of barriers, including *societal and cultural barriers*, such as illiteracy, poverty and discrimination, and *institutional barriers*, such as inadequate justice institutional and facilities, limited legal assistance and lack of enforcement of decisions. Additionally, barriers often overlap in practice, engendering more complex problems such as corruption or lack of confidence in justice institutions. Because of such compound barriers, and by reason of the multidimensional concepts of rule of law and access to justice, identifying single indicators capable of measuring progress in relation to Target 16.3 has proved a complex task and, regrettably, in the course of negotiations, preference has leaned towards narrower indicators addressing only a limited portion of access to justice.

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12 This broad concept of access to justice has been employed in previous work of the Bingham Centre. See J Beqiraj and L McNamara, International Access to Justice: Barriers and Solutions (Bingham Centre for the Rule of Law Report 02/2014), International Bar Association, October 2014; J Beqiraj and L McNamara, International Access to Justice: Legal Aid for the Accused and Redress for Victims of Violence (A Report by the Bingham Centre for the Rule of Law 2015/05), International Bar Association, October 2015.

*Indicator 16.3.1: Percentage of victims of violence in the previous 12 months who reported their victimisation to competent authorities or other officially recognised conflict resolution mechanisms (also called crime reporting rate)*

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|---|--|
| <p><b>What the indicator covers: individuals who have reported being victims of violence with the competent authorities</b></p> | <p>This indicator rests on the assumption that crime reporting rates provide a measure of the confidence of victims of violent crimes in the ability of the police and other authorities involved to offering assistance and effective redress. These figures are matched against the number of all victims of violent crime within the established timeframe, thus providing an insight into the scale of crimes not reported to the competent authorities. Reporting may take place before police, prosecutors or other authorities with competencies to investigate crimes, as well as before officially recognised institutions with a role in informal justice or dispute resolution, such as tribal or religious leaders, village elders, community leaders, etc.</p> <p>Crime reporting rates are relevant for measuring access to justice, because reporting to authorities is the very first stage for victims of crime to seek justice. The indicator is based on data reflecting actual experience and behaviour of victims of crime, and not on perceptions about their confidence in the system.</p>  |
| <p><b>Data: how do we find out about those who have reported being victims of violence?</b></p>                                 | <p>Data and information regarding experience of a violent crime are collected through victimisation surveys among households conducted at the national level. Such surveys also include questions on whether the victim reported the crime to competent authorities. The main challenge for global monitoring of this indicator is the comparability of existing data, with regard to both the definition of 'violence' or 'violent crimes' and the survey methodology employed.<sup>13</sup></p> <p>According to UNODC, 72 countries have implemented at least one national victimisation survey after 2009, and in 43 of these, the national statistical office or another public institution or ministry conducted the survey. In addition, it is reported that nine African countries have already implemented, or are in the process of implementing, a victimisation survey module as part of the Strategy for the Harmonization of Statistics for Africa (SHaSA).</p> <p>At the global level, UNODC collects information on crime reporting rates through the annual Crime Trends Survey (UN-CTS). However, data on crime reporting rates is currently available only for approximately 35 countries. The survey also collects data on sexual offences against children, but it is not clear how effectively the reporting system at the national level can capture such cases, especially as regards the ratio between reported and unreported cases.</p> <p>Further disaggregation of data by sex, type of crime, ethnicity, migration background and nationality has been recommended. This would provide information on whether there are differences in the tendency to report victimisation experiences along these breakdowns.</p> |

The main limitation of this indicator is its restricted scope: it is aimed at measuring access to justice in relation to violent criminal acts and does not cover other criminal acts and civil or administrative disputes. The indicator provides a partial picture of the confidence citizens have in the justice system, limited to cases when violence occurs. Moreover, the indicator does not monitor the level of effectiveness of reporting, and thus does not tell much about the extent to which victims were effectively protected from future violence and whether they obtained justice and redress after reporting.

The indicator, nevertheless, is particularly relevant for mapping gender equality issues with regard to denouncing violent victimisation. Increased levels of reporting would indicate, for instance, that awareness-raising measures about the unacceptability of violent behaviour have been successful, or that reporting channels for victims have improved and/or trust towards authorities has increased. Higher reporting levels would also indicate that criminal justice institutions are better suited to enforce the law and ensure access to justice and the rule of law.

Obtaining significant and comparable data, capable of charting victimisation reporting rate trends concerning children remains, however, a key challenge to measuring the extent to which the justice system has incorporated child-friendly and gender-sensitive approaches. As noted earlier, this is related to the methodology of household surveys and additional efforts are needed to produce comparable data.

<sup>13</sup> Some technical guidance on the implementation of surveys, drawn from good practices developed at country level, is provided in the UNODC-UNECE Manual on Victimization Surveys <https://www.unodc.org/unodc/en/data-and-analysis/Manual-on-victim-surveys.html>. See also UNODC, International Classification of Crime for Statistical Purposes (2015).

| <i>Indicator 16.3.2: Unsented detainees as a percentage of overall prison population</i>                           |  |
|--|--|
| <b>What the indicator covers: rate of detained persons before a final decision about their case has been taken</b> | <p>The indicator is aimed at measuring the efficiency of the justice system in the light of respect for the standard of presumption of innocence, and as a corollary, of the principle that persons awaiting trial shall not be unnecessarily detained in custody. The concept of ‘sented detainees’ refers to persons who have received a ‘final’ decision (ie, not subject to appeal) from a competent authority regarding their conviction or acquittal during criminal proceedings.</p> <p>While pre-sentence detention may be required in certain cases to prevent absconding of alleged perpetrators, to protect victims or witnesses, or to avoid the repetition of offences, an extensive use thereof may result in a wasteful use of the resources ascribed to the criminal justice system. Additionally, from a development perspective, a disproportionate use of pre-trial detention overloads the financial burden on the accused and their families, owing to the costs related to unemployment, justice and reintegration into society.</p> |
| <b>Data: how do we find out about ‘unsented detainees’?</b>  | <p>Information for the purposes of this indicator is mainly obtained from national administrative records. The definition of ‘detention’, as well as the day and the year on which the data is collected, are factors to be considered in the comparability of data across jurisdictions and for the purposes of measuring international progress in relation to this indicator.</p> <p>At the global level, UNODC collects prison data and information through its annual survey (UN-CTS). In Europe, data are available from the Council of Europe Annual Penal Statistics and, in the Americas, from the OAS Observatory on Citizen Security Data Repository. It is reported that data on unsented and total detainees from the UN-CTS is available for 114 countries. Further data, covering another 70 countries, is available from supplementary sources such as research institutions and NGOs.</p> <p>The recommended breakdown for this indicator is by age, sex and length of pre-trial detention.</p>   |

Deprivation of liberty for children, including in the context of pre-trial detention, should be a measure of last resort. Obtaining data on ‘pre-sentence’ detention affecting children, disaggregated by sex and length of detention, will enable a better understanding of the phenomenon – both globally and within jurisdictions – and will help in detecting gender equality issues, for instance, where different levels of unsented detention exist for boys and girls. This will prompt the adoption of targeted measures that match the concrete situation. Measuring the extent to which detention is used with regard to children will also provide the evidence to assist countries in identifying and implementing suitable alternatives to deprivation of liberty that promote the child’s reintegration into society. The legal community can play an active role both during the detention stage, by ensuring that detainees get the ability to understand their rights and are treated fairly when their case is heard, and in offering advice on public–private alternative solutions to detention, suitable to promoting children’s rehabilitation.

## 2.4 Target 16.9: By 2030, provide legal identity for all, including birth registration

Lack of birth registrations is a major cause of non-recognition of legal identity and a serious threat to access to justice. Child registration at birth is the first step in securing recognition before the law, in safeguarding the rights of the child and in enabling children to seek redress in case of violation of their rights. Recognition and proof of legal identity, for instance, are often necessary to claim social entitlements, such as healthcare and education. At later stages in life, lack of identity documentation may preclude access to social assistance, the right to vote and the exercise of economic rights or the pursuit of economic activities, such as land purchase, proving the right to inherit property, opening a bank account, obtaining a licence to practise a profession or secure a loan to start a business. As such, legal identity is an important empowerment factor in breaking the cycle of poverty. Moreover, lack of registration may result in early marriage, early conscription to the armed forces or early entry into the labour market.

Target 16.9 builds on the recognition of the harmful effects of unregistered births for children (nearly 230 million under the age of five, according to UNICEF), especially those in poverty, and acknowledges the positive interrelationship between legal identity, on the one hand, and poverty reduction, legal empowerment and human development, on the other.

| <i>Indicator 16.9.1: Percentage of children under five whose births have been registered with a civil authority, disaggregated by age</i> |  |
|---|--|
| <b>What the indicator covers: rate of unregistered children at birth</b>  | <p>The indicator for Target 16.9 is informed by Article 7 of the Convention on the Rights of the Child (CRC), which provides that all children should be registered immediately after birth and have the right from birth to a name and to acquire a nationality. Additionally, Article 8.2 of the CRC establishes that, 'where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity'.</p> <p>The indicator is calculated by dividing the number of children below the age of five whose births are reported as being registered with the relevant national civil authorities by the total number of children under the age of five in the population.</p>   |
| <b>Data: how do we find out about unregistered children?</b>  | <p>Data regarding this indicator is collected at the national level mainly through censuses, civil registration systems and household surveys. The suggested measurement frequency of this indicator is annual.</p> <p>With censuses and household surveys being costly and complex, efficient civil registration systems become essential in providing updated data for comparing the estimated total number of births in a country with the absolute number of registered births during a given period. However, quite often, these systems do not function properly, and this constitutes a serious challenge, in many countries, to systematic recording of births. To correct such deficiency, household surveys have become a key source of information in this regard, but they cannot be undertaken at high frequency. Such surveys generally ask questions about the registration status of children born in the previous five years. UNICEF reports that in most low- and middle-income countries, surveys represent the sole source for this kind of information.</p> <p>At the international level, information relevant for this indicator is collected and stored by UNICEF in a database that comprises statistics since 2003.<sup>14</sup> UNICEF has thus developed global and regional estimates of the percentage of unregistered children under the age of five, based on available data from more than 160 countries. Additional relevant sources for calculating estimates are the United Nations Demographic Yearbook and the World Population Prospects produced by UNPD-DESA. Available data can be disaggregated by age, sex, place of residence (urban/rural) and wealth (by quintile).</p> |

The breakdown of data by sex is well suited to revealing gender equality issues. In particular, it can provide evidence of practices of cultural prejudice and discrimination against women that are reflected in the lack of birth registration.

While this indicator measures registration rates for children under the age of five, the scope of Target 16.9 is broader, as it predicts to 'provide legal identity for all' by 2030. It follows that even if data is mainly available for children under the age of five, compiling statistics for all children under 18 years is also very important to measuring progress in the efforts to increase birth registrations, as well as to ensuring that no child is left behind.

Because of the impact that the non-recognition of legal identity has on the enjoyment of social and public services, the data collected under this indicator could also serve as an indirect measure of progress in relation to Goal 4, 'Ensure inclusive and equitable quality education and promote lifelong learning'.

<sup>14</sup> See <http://data.unicef.org/child-protection/birth-registration>



## 2.5 Target 16.b: Promote and enforce non-discriminatory laws and policies for sustainable development

Discrimination is an obstacle that affects access to justice from multiple perspectives. It can hinder awareness and understanding of legal rights, access to counsel and to dispute resolution mechanisms, and the achievement of fair, impartial and enforceable solutions. *De jure* discrimination can be repealed through laws, while elimination of *de facto* discrimination requires additional strategies and positive action. Importantly, in times of economic downturn, discrimination tends to persist or reappear, and so measures aimed at combating inequality and exclusion in a sustainable manner in the long term are important. Age and sex are explicit grounds of discrimination prohibited under international human rights law. Collecting data on the efficiency of non-discrimination laws and policies is a key step towards the identification of sustainable approaches that take into account the specific needs of and challenges faced by the discriminated persons and groups.

*Indicator 16.b.1: Percentage of the population reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law, disaggregated by age group and sex*

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|---|--|
| <b>What the indicator covers: extent to which persons have been subject to discrimination</b> | This indicator measures the actual discriminatory behaviour suffered, that is, experience rather than perception, which may be affected by stereotypes. When related to Target 16.b, the indicator provides an outcome figure of the efficiency of non-discriminatory laws and policies when applied in practice from the perspective of the population.   |
| <b>Data: how do we find out about persons who have been discriminated against?</b>            | <p>The primary source of data for this indicator is surveys conducted nationally, in an increasing number of countries, or at the regional level. Survey techniques of identifying representative samples and eliminating errors and biases in the responses obtained are extremely important to ensuring that survey results are robust, representative and reliable.</p> <p>Regionally, the EU Fundamental Rights Agency (FRA) collects the data for EU Member States. Relevant data is also collected in the Eurobarometer and the Afrobarometer surveys, and they could be adapted to include a more specific question on discrimination experiences. However, no collection of such information takes place at the global level.</p> <p>In addition to age, sex, region and population group, the suggested breakdown of data for this indicator comprises sorting of information by other grounds of discrimination, relationship with the person or entity felt to have discriminated (eg, employer/employee, public official or employee, private enterprise, or teacher/student) and place where the discrimination occurred (work, street, home, school, etc).</p> |

Data breakdown is particularly relevant for this indicator. While disaggregation at the global level can remain more limited and acknowledge the explicit grounds of discrimination listed in major human rights instruments and common to all countries, such as sex, age or disability, additional grounds should be determined and measured at the national level to reflect discriminatory patterns in the specific context. These additional grounds could include ethnicity, migratory or displacement status, sexual orientation, gender identity or religion.

However, the use of surveys as a method of collecting information, as already noted, implicates that children are often excluded from participation or, in the case of household surveys, that the information regarding instances of discrimination against children is filtered through their parents or guardians. Moreover, it has been noted that, depending on the type of survey, in many national contexts the collection of data may exclude those with no access to telephones, such as the homeless or low-income groups, or illiterate persons in the case of web or mail surveys. In face-to-face surveys, rural and remote populations or members of linguistic minorities might often get excluded.

In general, evidence suggests that the most marginalised populations are less likely to respond to surveys.

Because of the methodology employed, data collected in relation to this indicator would fail to measure the frequency at which discrimination occurs. The indicator measures the percentage of the population that has reported discrimination during the indicated period; therefore, each victim is counted only once, regardless of the number of discriminatory experiences. Accordingly, it would be useful to keep records of multiple grounds of discrimination where these occur (eg, discrimination based on both sex and age) and include in surveys a question that would elicit information concerning the relationship with the person or entity that discriminated and the place where the discrimination occurred.

The data collected under this indicator is also relevant for monitoring progress with regard to Goal 10 concerning the reduction of inequalities within and among countries, and Target 16.3 on promoting the rule of law and ensuring access to justice for all.



# Chapter 3: The Role of the Legal Community

## 3.1 Delivering the Sustainable Development Agenda: five ways the legal community can make a difference

The SDGs have the potential to make an important contribution to the empowerment of children in the context of eradication of poverty and sustainable development based on international legal norms and standards. Goal 16, in particular, provides a unique opportunity for the realisation of the benefits of the Agenda for children, by ensuring that they are better assisted and protected by justice systems, and by strengthening the rule of law efforts regarding justice for children and full respect of their rights.

Although the goals and targets as such do not specifically use human rights language, nor do they enclose legally enforceable commitments, some of them closely echo the obligations enshrined in human rights instruments concerning children's rights. Accordingly, the legal community can play an active role and provide leadership, at both domestic and international levels, in tackling issues of poverty and sustainable development. This briefing paper has highlighted the key linkages between the law and the SDGs, and the role of legal mechanisms and the legal community in the empowerment of children out of poverty cycles in the context of sustainable development.

The innovative aspect of the Agenda is that the new sustainable development framework is grounded on a fresh commitment to realise the conditions that will enable the fulfilment of the longstanding obligations enshrined in human rights instruments concerning children's rights. Examples in this regard include the undertaking to ensure universal access to health care services, especially for children (Target 3.8); to eliminate all harmful practices against girls (Target 5.3); or to eradicate the worst forms of child labour, including by promoting safety and health standards in the workplace (Targets 8.7 and 8.8). The commitment to the rule of law and access to justice for all in Target 16.3, which calls for the establishment of mechanisms of enforcement and accountability, will benefit children with regard to the enforcement of their human rights in practice. Improved access to justice empowers the poor and most vulnerable in the enjoyment of their rights.

Against this background, monitoring and assessing the significance and impact of the action undertaken in the context of the new Agenda is of crucial importance. In practice, the efforts put in place by states in the collection of data and their breakdown along the relevant categories will supplement the existing human rights monitoring system with a quantitative measurable dimension of the progress made in the delivery of the Agenda and on its impact on the wellbeing of children.

The role of law and legal mechanisms in alleviating child poverty outlined in this paper can also be extended, *mutatis mutandis*, to other areas presenting challenges for sustainable development. There are more pathways through which lawyers involved in advocacy, law reform, drafting of new legislation, legal education and providing legal assistance and representation can make a uniquely useful contribution to the delivery of the Sustainable Development Agenda. Here, we set out five that may provide pathways of interest for lawyers.

**Help lawyers working in the international development community, in domestic anti-poverty and rights initiatives, and others, understand the legal significance of the SDGs.** The legal community can help place the SDGs in a legal context, both by contributing to a better understanding of the legal significance of the SDGs framework, and by bringing the goals' language, overall vision and general principles in legislative processes and in legal arguments in the case law. The legal community has competence and expertise in several areas covered by SDGs – beyond wellbeing and empowerment of children – including promotion and protection of human rights, gender equality, decent work and fair labour practices, and corporate social responsibility. Lawyers can use such expertise to offer advice on the legal meaning of some of the terms and concepts in the goals, targets and indicators. Moreover, if law is one of the instruments of development, as recognised in the Agenda, the legal community has a unique opportunity to deploy legal skills in the most effective way to eradicate poverty and promote sustainable development. It has the tools to identify poverty and development challenges where law is either part of the cause or part of the solution, and can use legal expertise, professional skills and legal training to address them.

**Promote legal interpretations compatible with sustainability objectives.** Lining up legal frameworks with the objectives of the Agenda for sustainable development, lawyers can play a key role in promoting legal interpretations on the correct implementation of existing laws that reflect and are inspired by sustainability concerns.

**Inform the understanding of legal concepts involved in data collection and promoting evidence-based policy reforms.** In the context of proposals for legislative reform, the legal community can both benefit from the monitoring process put in place by the SDGs and contribute to their successful implementation. It can do so by taking the evidence drawn from the data collected and use it to support policy and advocacy arguments for legal reform. In addition, the legal community can apply its practical expertise in a range of areas addressed in the SDGs to analyse and discuss the legal meaning of the terms employed, and thus contribute to increasing the rigour of the data collected.

**Contribute to the legal empowerment of the most vulnerable through legal assistance and representation.** In their day-to-day work, lawyers can trigger the legal empowerment of the most vulnerable groups of society, including children, this being a precondition to and/or an important factor in the achievement of several other goals of the Agenda. Their contribution is delivered at different levels and includes legal awareness raising, legal education, provision of free or low-cost legal assistance and representation to individuals (not only defendants but also victims) and strategic litigation on critical cases that are likely to have a high impact at the national, regional or international level.

**Provide legal support and technical assistance to governments and civil society organisations.** Alongside individuals, legal support in the form of awareness raising and legal training can also be addressed at governments, civil society organisations, business and finance groups and lawyers in developing countries. The legal community can thus provide leadership delivering technical assistance to strengthen the understanding of the importance of legal frameworks in the context of sustainable development and to give voice to a broader range of actors (both within and outside the legal community) involved in the realisation of the Agenda.

# Glossary

**Disaggregation** – In the Agenda’s jargon, ‘disaggregation’ means the breakdown of data. This is essential to meaningful measurement and to meeting the spirit of the Agenda to ‘leave no one behind’. Where relevant, data should be disaggregated by sex, age, geographical location and other characteristics.

**Indicators** – Indicators will be established in due course to measure progress in the achievement of the goals and targets in the Post-2015 Sustainable Development Agenda. The Agenda adopts a combined global and state-based approach for monitoring the achievement of the Goals through targets and indicators. The global and aspirational targets and indicators will be complemented by targets and indicators at the regional and national level; the latter will be guided by the global level of ambition but will take into account national circumstances.

**Inter-agency Expert Group on SDGs (IAEG-SDGs)** – This expert group is a technical organ of statisticians composed of 28 representatives of national statistical offices and (as observers) representatives of regional and international organisations and UN agencies. It has been entrusted with the task of managing the first stage of the process related to the definition of the global indicator framework. The proposal developed by the IAEG-SDGs will be considered for adoption by the ECOSOC and the UN General Assembly.

**Millennium Declaration** – In 2000, the UN member states adopted the Millennium Declaration, which set out a number of commitments to eradicate poverty in the next years.

**Millennium Development Goals (MDGs)** – The commitments enshrined in the Millennium Declaration were translated into eight operative MDGs to be achieved by 2015.

**Sustainable Development Goals (SDGs)** – The Post-2015 Sustainable Development Agenda includes 17 Goals for Sustainable Development that UN member states have committed to achieve by 2030.

**Post-2015 Sustainable Development Agenda (Post-2015 Agenda)** – The Agenda contains a global programme for sustainable development for the period 2015–2030. It was unanimously adopted by UN General Assembly resolution in September 2015 and came into effect on 1 January 2016.

**Targets** – Targets are specific and measurable objectives against which the realisation of the SDGs will be matched. There are 169 targets on sustainable development in the Agenda covering a broad range of sustainable development issues.



