

PART I

A Children's Rights Approach to Sustainable Development

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Edited by Claire Fenton-Glynn
Excerpt
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Introduction

Claire Fenton-Glynn

In 1973, Hilary Rodham said that “[t]he phrase ‘children’s rights’ is a slogan in search of a definition”.¹ For many years, much the same could be said about sustainable development. Widely accepted as a desirable policy objective, its very essence has been contested, meaning all things to all people. The idea of sustainable development is “fraught with contradictions”,² and the same phrase is used to mask widely divergent mechanisms, tools and objectives. In recent years, with the introduction of the Sustainable Development Goals (SDGs), the concept has started to move beyond merely a catchphrase, to provide a more concrete understanding of its aims and objectives and how it should translate into practice. Nevertheless, these goals have not gone unchallenged, and the precise confines of the concept of sustainable development is still open to widely diverging interpretations.

In 1987, the Brundtland Report famously defined *sustainable development* as “[d]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs”.³ But development must be about more than meeting basic needs. As Fukada-Parr and Ely Yamin have argued, development should concern the expansion of capabilities and the realisation of rights: this means that people should not only be passive beneficiaries of progress but also active agents who can voice their concerns and claim entitlements.⁴ As such, this book will view sustainable development through a rights-based lens – what are

¹ H. Rodham, “Children under the Law” (1973) 43(4) *Harvard Educational Review* 487.

² M. R. Redclift, *Sustainable Development: Exploring the Contradictions* (London: Methuen, 1987), 438.

³ World Commission on Environment and Development, “Our Common Future” (UN Doc. A/42/427, 1987), www.un-documents.net/our-common-future.pdf.

⁴ S. Fukada-Parr and A. Ely Yamin, *The Power of Numbers: A Critical Review of MDG Targets for Human Development and Human Rights: Overview* (2013), 7, www.worldbank.org/content/dam/Worldbank/document/Gender/Synthesis%20paper%20PoN_Final.pdf.

the rights of the current generation, and how can they be implemented while not compromising the rights of future generations?

Even this simple definition is imperfect. In contrasting the rights of present children with those of future generations, it creates a conflict between the two sets of interests and fails to recognise that development also gives rise to conflicts even within current generations, where the needs of one group are met at the expense of another. Patterns of development can displace burdens not only in time but also in place, pushing them onto other parts of the world, or other sections of society. This is particularly the case for children, who are often less visible, and less able to assert their rights.

The question then becomes: how do we harmonise these interests and balance competing claims? Governments need to make choices about what actions to fund, what activities to support and how to support them, and a human rights-based approach gives them the framework to do this. It provides a structure by which we can assess policy choices and resource allocation, and challenges existing apparatus of power and decision making.

While a rights-based approach to sustainable development is not new, this volume seeks to view sustainable development through the somewhat narrower lens of a children's rights perspective. In particular, it will consider how the UN Convention on the Rights of the Child (UNCRC) and the language of rights can help children access the means to secure sustainable livelihoods. In doing so, it views children as not merely the beneficiaries of development but also active agents of change, whose rights are fundamental not only to our future but to our present also.

This volume uses the UNCRC and the SDGs as its starting point, but they are most certainly not the end point. The aim of the volume is to show ways in which the UNCRC can be used to ensure sustainable, equitable and child-friendly development, but equally, to identify areas in which its provisions do not go far enough to protect and advance children's rights. It does not attempt to work through each right under the UNCRC systematically, but instead identifies particular challenges to children's rights that have emerged in light of increasing development and globalisation and examines how these correlate with existing legal frameworks.

Part I of this volume provides the background to a children's rights approach to sustainable development. In addition to this introduction, Wouter Vandenhoe (Chapter 2) presents an examination of how legal scholarship on children's rights can engage with the "law and development" field, and vice versa. He widens the discussion beyond traditional concepts of children's rights-based approaches to development (CRBAD) to children's rights-based approaches to *sustainable* development (CRBASD), including the key concepts of the intergenerational principle, the precautionary principle and common but differentiated responsibility. Drawing on an analysis of the evolution of the field of law and development, he identifies three areas in which it can be instructive for CRBASD: the importance of normativity, the complexity of social engineering through law and the need for localised

and bottom-up approaches. In turn, he indicates areas in which CRBASD can contribute to law and development studies, namely by further broadening the understanding of development beyond the economic; by further broadening law and development scholarship beyond economic law research; and by initiating and stimulating debates within human rights and/in/for development scholarship on the conceptual relationship between children's rights and human rights law, and engagement with sustainable development law.

Part II moves on to consider how children's rights can be conceptualised in the context of sustainable development. In doing so, it highlights the strengths and weaknesses of the UNCRC and the ways in which children's rights theory has evolved since it was drafted almost 30 years ago. Julie M. Davis (Chapter 3) argues that the UNCRC is an outdated instrument, reflective of the image of the child and societies of the drafting period, and needs to be rearticulated, revised and significantly updated. She proposes instead a reconceptualised rights framework that young people are capable social actors who have a right to participate in decision making and action taking about sustainability matters and suggests that education holds the key to the necessary shifts in thinking, values and practice required for this transition. While this new framework begins with the rights drawn from the UNCRC, it also augments these rights with additional dimensions concerning recognition of active/agentive participation, collective rights, intergenerational rights and bio/ecocentric rights. Furthermore, Davis argues that there needs to be a significant shift in awareness, values and practices to change our currently unsustainable patterns of consumption and production, and that mainstream approaches to education are inadequate for dealing with the challenges that sustainable development imposes. She suggests that current educational paradigms are based in neoliberal individualism, market-based scientism, competitive outcomes and reductionist specialisms, and should be replaced with whole-of-systems, relational learning and critical, restorative and participative alternatives. Overall, she argues for a dramatic reorientation in educational thinking and practice, creating new values, ideas and institutions that support just, equitable and sustainable futures.

Chapter 4 focuses on the right of children to participate in decision making concerning them under article 12 of the UNCRC, and in light of SDG 16, which is dedicated to the promotion of peace and inclusive societies and building effective and accountable institutions. Holly Doel-Mackaway identifies children's participation in relevant law and policy making as a necessary component of democracy and of good governance, and that it is linked to upholding the rule of law and therefore essential for sustainable development. In analysing this right, Doel-Mackaway emphasises that participation is one of the foundational rights, which has the potential to positively impact on the implementation of the comprehensive body of children's rights, through providing an avenue for children and young people to inform and influence laws and policies relevant to their lives. She undertakes a detailed analysis of the right to participation under article 12, identifying different

interpretations of this right according to the Vienna Convention on the Law of Treaties, and develops a template to assist states to better understand the meaning of this article, and how to involve children and young people when developing laws and policies concerning sustainable development.

In Chapter 5, Octavio Luis Motta Ferraz examines the children's right to health, and the SDG to achieve access to quality essential health-care services for all, in light of the "rights-resources dilemma". Using the rare genetic disease of Epidermolysis Bullosa as a case example, he explores the challenge of how to achieve this goal within limited resources in an efficient and equitable manner. In doing so, he recognises that any plausible interpretation of the right to health will allow for justified exclusions of certain treatments, and questions whether courts are able to hold the state to account in this task. Ferraz argues for a robust procedural review of decision making, and the close engagement of courts with public health expertise in the field of priority setting, to ensure a just application of children's right to health.

The final three chapters in this section focus on groups of children who are particularly vulnerable in their capacity to exercise their rights. Chapter 6 analyses the ability of girl children to access their rights under the UNCRC and the effect that this has on sustainable development. Amanda Kron highlights the synergies between gender equality, and economic, social and environmental sustainability, and emphasises the double discrimination faced by adolescent girls by virtue of their age and gender. She examines the disadvantage that gender inequality creates for both girls *and* boys, and how this has been reflected in the Millennium Development Goals (MDGs) and SDGs. Focusing in particular on early and child marriage, she shows how this harmful practice directly inhibits sustainable development and children's right to health, education and participation, and presents major obstacles to achieving sustainable development for all. Kron then turns her attention to sexual and reproductive health and rights, and demonstrates how available, affordable, accurate and age-appropriate services are linked to achieving the right to the highest attainable standard of health and access to education. Finally, Kron emphasises that for these rights to be effectively respected and upheld, the cooperation of both state and non-state actors is crucial. She highlights the role of community leaders, religious leaders, as well as other influential political or social figures in conveying key considerations and acting as translators between the global and the local, as well as training and education efforts to ensure a stable shift of norms, practices and expectations.

In Chapter 7, Paul Harpur and Michael Ashley Stein examine the rights of children with disabilities (CWDs) in the context of sustainable development, with a particular focus on the right to education. They emphasise that the deprivation of the right to education of CWDs has broader implications for poverty and development, as it reduces prospects for future financial independence, and increases long-term social and financial costs to the state. Harpur and Stein analyse the rights of CWDs under the UNCRC, showing that while it requires significant efforts from

states for CWDs within their own borders, it compels far less when promoting the rights and objectives of the Convention in development initiatives. In light of this, Harpur and Stein look to the Convention on the Rights of Persons with Disabilities (CRPD), which provides a standalone international cooperation and development clause, and signals a dramatic sea change from the limited protection historically provided to CWDs by international human rights laws. They emphasise the importance of not siloing advocacy to a single convention and argue that the implementation of SDG-based programmes must be effected in a manner conducive to realising UNCRC rights to education, but also consider the rights of CWDs under the CRPD.

Part III considers the environmental dimension of sustainable development, and how children's rights have been conceived and acknowledged within this. In Chapter 8, Sumudu Atapattu examines the intergenerational equity principle, and how this concept shapes the implementation of children's rights approaches to sustainable development. She notes that children are disproportionately affected by decisions taken by adults with regard to development but lack a voice at the table to influence these decisions. In this light, she considers whether there is a legal obligation to ensure that the next generation will be able to exercise their rights, focusing in particular on the conservation of natural resources, climate change and the environment. She identifies a gap in protection from the UNCRC in this respect, despite the concept being recognised on an international level at the time of drafting, but shows how other instruments at a national, regional and international level can be used to ensure that the intergenerational equity principle is respected. In Chapter 9, Ellen Desmet analyses how environmental concerns have been taken up in international children's rights law and policy, and, conversely, whether and how children and their rights are recognised within sustainable development policy agendas, with a focus on environmental issues. Noting the limited consideration of the environment in the UNCRC, she suggests that the UNCRC may not be well equipped to address the increase in nature and severity of environmental challenges. Moreover, when considering the main children's rights policy agendas at the United Nations focusing specifically on environmental challenges, she argues that the predominant images are of children as vulnerable beings, and a protectionist approach is apparent. Desmet argues that this image of children as future citizens, vulnerable beings and "resources" can also be seen in reviewing the sustainable development documents over the past decades, but that a shift has occurred in more recent instruments to a more nuanced understanding of children as participants and bearers of rights. She concludes by considering the recognition of children and their rights in the 2030 Sustainable Development Agenda, concluding that although there are some positive indications, ultimately the role of children in environmental issues, especially as actors, is not duly acknowledged.

Chapter 10 focuses on climate change, sustainable development and children's rights. Karin Arts highlights the impact that climate change has on children's rights – both now and the future – and argues that given the concrete risks, climate change

interventions are mandatory, and must be rights based. She provides an overview of the way in which children's rights under the UNCRC are implicated by climate change, arguing that the large majority of provisions have a potential role to play and may be seriously affected by climate change. Arts then goes on to examine the work of the Committee on the Rights of the Child in this area, noting the striking lack of consideration in Concluding Observations by the Committee, as well as General Comments. She argues that the international community must step up its response to climate change, and the integration of children's rights in this agenda. In particular, she notes that at the level of multilateral human rights and environmental diplomacy, children are still marginally involved at best, and child participation requires support and facilitation structure and straightforward objectives to be (come) meaningful for all concerned. Finally, Arts emphasises the importance of generating and analysing disaggregated data, impact assessment of policies and other concrete interventions, as well as awareness raising and education of the impact of climate change, to effectively address the multifaceted challenges posed by this growing problem.

Carissa Wong (Chapter 11) considers the relationship between the rights of indigenous children and the fulfilment of the promise of sustainable development. Focusing on Canada as a case example, she argues that government policies have undermined the ability of indigenous knowledge keepers to pass on their understanding of the environment and attacked the relationship between indigenous peoples and natural resources. She suggests that this is particularly important in the context of water management, as indigenous law upholds the spirit and sacredness in nature that would support a more eco-centric, precautionary approach to water. Wong poses that by ensuring children's rights to receive information and ideas of all kinds, to be educated to respect their own and diverse cultural identities, values and religions and to express their views in matters that affect them, the UNCRC supports children's participation in the practice of indigenous law in Canada. This involves the right to learn respect for all living things, to internalise an eco-centric precautionary principle and to uphold the principle of progress as renewal. Furthermore, she argues that the UNCRC protects the right of a child to receive information about his or her natural environment, to life-wide equality and legal agency and to act as a duty bearer. Finally, she emphasises the importance of multi-stakeholder participation, rehabilitation, restoration and relationship building, seen in indigenous law, to ensure a more sustainable and adaptive management process for the sustainable use of water in Canada.

In Part IV, authors analyse children's rights in an increasingly globalised world, focusing on topics ranging from trade liberalisation, child labour and developing urban environments, to the right to play and the global obesity epidemic.

In Chapter 12, Sébastien Jodoin and Candice Pollack explore the relationship between children's rights and economic globalisation and consider whether and how the liberalisation of international trade has affected the rights of children.

They analyse the synergies and conflicts between the intersecting treaty regimes of the UNCRC and World Trade Organisation (WTO) and discuss the implications of the pursuit of mutual complementarity and the recognition of concurrent responsibilities. They argue that as a general matter, the liberalisation of international trade should not be seen as incompatible with the promotion and protection of the rights of children but that a children's rights-based approach must be at the heart of the negotiation and implementation of trade agreements. Using child labour as an example, Jodoin and Pollack consider whether trade measures adopted for the purposes of eradicating this practice could be found to be WTO compliant. In this respect, they examine the legality of banning goods produced through child labour, and conditioning access to preferential trade treatment on the basis of whether a developing country has adopted reasonable measures to enforce the prohibition on child labour. They conclude by examining two instruments that could be used to protect the rights of children in the context of an expanding global market: children's rights impact assessments and non-state market-driven certification programmes, demonstrating the opportunities for the promotion of children's rights in the arena of international trade.

Jenny Driscoll (Chapter 13) focuses on child labour, challenging the work/education dichotomy and arguing for a more nuanced and context-specific approach to determining what is in the best interests of the child. She argues that the principle of sustainable development – meeting the needs of the present without compromising the future – is as applicable to the life trajectory of the individual working child and the welfare of their family and community, as it is to global development. The chapter considers three issues: the relationship between poverty reduction and children's work at the national, regional and international level; the extent to which children can and should contribute to family income and community activities through paid and unpaid work when that work may have the potential to undermine both the developmental aims of the society in which they grow up and their own future prospects; and whether the International Labour Organisation's (ILO's) abolitionist agenda is congruent with the aims of the SDGs. In doing so, Driscoll provides insight into how concerns as to the immediate well-being of children can and should be balanced against considerations of their future prospects.

Chapter 14 examines the right to play in the context of international sustainable development. Tara Collins and Laura Wright suggest that play is often wrongly conceived as less important by individuals and organisations and argue that it should instead be seen as an integral element in sustainable development, as it is instrumentally important in supporting children's healthy development and well-being in the present and future, as well as having intrinsic value as part of childhood. They rely upon three main influences for its conceptual framework – children's rights, sociology of childhood and an anticolonial discursive framework – and evaluate the right to play in international development and humanitarian settings. They argue

that providing opportunities for play hones innate play skills, which are critical resources that can support children's self-determination by preparing them for what life delivers, as well as helping them to develop coping mechanisms and skills for their own well-being and developing self-protection skills. They further suggest that play empowers children to meet challenges, and that the skills acquired through play contribute to children's meaningful participation in decision-making processes. These skills in turn play an integral part in supporting the actualisation of sustainable development in many areas, including gender equality, good health and well-being, education and peace and justice.

In Chapter 15, Liam Magee, Amanda Third and David Sweeting explore the intersections between discourses on child-friendly cities and sustainable development and the realities of rapidly expanding informal urban settlements. The authors take a capabilities approach to children's rights, which acts to enrich, extend and strengthen understandings of the UNCRC, allowing these rights to be translated into practical actions. In doing so, they consider how the city develops, unfolds and expands sustainably over time. Sustainable development then can be seen as a process of continued remaking of the city as a space where actual capabilities are exercised in the present, and potential capabilities are anticipated, and planned for, for the future. From this premise, the authors consider five provocations that might orient how the child's future rights to the city might be framed: "Complex Participation", "Multiplicitous Cartographies", "Open Development", "Organised Serendipity", and "Live Laboratories". They argue that a child-friendly city sees itself through the eyes of children, and children must feel that they can talk to the city and have an effect on its systems of structures and power. Children's agency must be acknowledged and mobilised, and they must feel that the city continues to develop its capabilities to house and nurture them. In conclusion, they caution against "child-friendly" becoming an empty adjective and argue that a more attenuated definition of sustainability and sustainable development is required to take stock of the complex and chaotic conditions of rapidly developing cities, and how these concepts must necessarily be negotiated and rearranged around the pivotal figure of the child.

In Chapter 16, Lucia A. Reisch and Wencke Gwozdz examine how and why healthy diets and health supporting environments are basic preconditions for children to develop and a fundamental right of all children. Noting the imperative in article 24 of the UNCRC to "combat malnutrition" and provide "adequate nutritious food", the authors emphasise that states have an obligation to act to combat obesity and ensure that all children have access to food that is not only sufficient in quantity but in quality also. They argue that childhood obesity has become a major factor jeopardising the sustainable development of societies, in a social, economic and ecological perspective, and this is particularly true for low- and middle-income countries. In terms of social sustainability, Reisch and Gwozdz highlight that obesity threatens social cohesion, equity and fairness, as it is closely linked to deteriorating

health, reduced mobility, stigma, lower socio-economic status, income inequality and premature mortality resulting in an overall poorer quality of life. Obesity also has consequences for economic sustainability, and the ramifications of obesity on health-care systems and labour markets are severe. Finally, they argue that obesity is closely connected to ecological unsustainability because current food production and consumption are characterised by an excessive use of energy and water. To combat this, the authors argue that national and international efforts to protect children's health from environmental threats should extend their area of application to create health-supporting environments and empower children to make healthier food choices.

It is hoped that this book will contribute to a greater understanding of how children's rights are affected by, and can affect, sustainable development. It shows that the UNCRC has great potential to respect, protect and enhance the rights of children, but that it should be seen as a work in progress – a foundational framework rather than the final word on children's rights. In light of new and emerging challenges, it must be interpreted in a dynamic manner, and child rights advocates must be willing to move beyond the text to a broader understanding of the rights of children in our developing world.