

Submission to the UN Committee on the Rights of the Child on the draft General Comment No. 27 on children's right to access to justice and to an effective remedy

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First of all, I would like to congratulate the Committee for producing this excellent and timely draft. I would also like to thank the Committee for the opportunity to provide this submission. In this submission, I propose several minor changes to the text of the Draft – mainly, to elaborate on the importance of the children's right to access to justice and to an effective remedy in the context of environmental harm. I acknowledge that the Committee has specifically focused on environment-related issues in its General Comment No. 26 (2023), which among other things, also addressed the question of access to justice and remedies.¹ Therefore, some overlap is inevitable; however, in my view, this does not undermine the purpose of the present Draft – particularly given that the present Draft explicitly refers to environmental harm.²

The combined impacts of planetary crises

It is highly laudable that the very first paragraph of the Draft (paragraph 1) explicitly refers to natural disasters and climate change as examples of crises that disproportionately affect children and endanger children's rights. Such an explicit recognition is fully consistent with the Committee's own practice³ and with the practice of other international human rights treaty bodies as well as domestic courts around the world.⁴ Despite children's limited ability to influence law and policy, as both the Committee's recent case of *Sacchi et al* and other climate change cases brought by children before other international human rights treaty bodies⁵ and

* E-mail: varvastians@cardiff.ac.uk. I have been working on human rights, environmental protection, and public health for over a decade. As part of this work, I have researched various issues that are directly relevant to the present Draft, in particular, access to justice in environmental litigation, the rights of children in the context of climate change and other environmental harm, and the relationships between international and domestic human rights and environmental law.

¹ General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26 (22 August 2023), in particular, paragraphs 82–90.

² For example, paragraphs 1, 18 (including the corresponding references to General Comment No. 26 (2023) in footnotes 8–10), and 63.

³ In particular, the General Comment No. 26 (2023) and the decision in *Sacchi v Argentina*, CRC/C/88/D/104/2019 (8 October 2021).

⁴ Samvel Varvastian, *Human Rights Approaches to Planetary Crises: From Climate Change to Plastic Pollution* (Routledge, 2024).

⁵ For example, *Duarte Agostinho v. Portugal* [GC] 39371/20 (9 April 2024).

domestic courts⁶ show, children are increasingly determined to contribute to strengthening the regulatory response to planetary crises, including by relying on avenues offered by international human rights treaties. Accordingly, as paragraph 5 of the Draft correctly concludes, if these rights are to have meaning – as opposed to being merely validated on paper – they necessitate access to justice and effective remedy.

In terms of potential improvement to the important reference to environmental crises in paragraph 1 of the Draft: in my opinion, this reference would be even stronger if it explicitly mentioned that these environmental crises as well as other crises referred to in this paragraph tend to feed into each other and make the impacts of each other worse, thus exacerbating the existing threats and vulnerabilities and narrowing the window of opportunity for averting irreversible harm. The interrelated nature of global pollution of air, water and land, climate change, deforestation and biodiversity loss, as well as the amplification of threats posed by these crises to vulnerable populations has been widely documented by bodies such as the Intergovernmental Panel on Climate Change⁷ and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services⁸ as well as by international human rights treaty bodies.⁹ In fact, the Committee’s General Comment No. 26 (2023) recognizes the links between environmental harm (including climate change) and other fundamental challenges (such as poverty, inequality and conflict) to children’s rights.¹⁰ Indeed, some of the cases mentioned earlier specifically raised concerns about the combined impacts of different types of environmental harm to children.¹¹

Therefore, explicitly acknowledging the combined impacts of these crises in the first paragraph of the present Draft (for example, by inserting “and their combined impacts” after the phrase “and many more” or something similar) seems justified and consistent with the Committee’s approach.

The role of civil society organizations

⁶ For example, *Neubauer v. Germany*, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20 (24 March 2021); *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020); *Future Generations v. Ministry of Environment of Colombia*, no 11001-22-03-000-2018-00319-01; STC4360-2018 (5 April 2018).

⁷ IPCC, 2023: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds)]. IPCC, Geneva, Switzerland.

⁸ IPBES, 2019: *Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. S. Díaz et al (eds), IPBES Secretariat, Bonn, Germany.

⁹ For example, *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/18, (ser. A) No. 23 (Inter-American Court of Human Rights, 15 November 2017),

¹⁰ For example, General Comment No. 26 (2023), paragraphs 20, 22, 35, and 47.

¹¹ For example, *Future Generations* (n. 6), pages 33–35. See also Samvel Varvastian, “Protecting Biodiversity with the Right to a Healthy Environment: Lessons from Climate Change Litigation”, in Phillipa McCormack and Richard Caddell (eds), *Research Handbook on Climate Change and Biodiversity Law* (Edward Elgar Publishing, 2024) 372.

The Draft correctly recognizes the important role of civil society organizations in facilitating children’s right to access to justice and to an effective remedy.¹² The availability of financial and other resources as well as technical and legal expertise available to civil society organizations can help overcome major barriers to accessing justice, such as financial costs, and so forth.¹³ For example, civil society organizations – including those representing children – have been instrumental in the rise of both rights-based and non-rights-based climate change cases before domestic and international courts and treaty bodies in many countries around the world.¹⁴ Similarly, civil society organizations have played an active role in the rise of cases concerning plastic pollution before domestic courts in various countries.¹⁵ At the same time, countries have different approaches to civil society organizations’ legal standing to bring rights-based lawsuits,¹⁶ with some being more restrictive,¹⁷ which may ultimately limit children’s right to access to justice.

In light of these considerations, the Draft could be further strengthened by explicitly referring to the need to provide access to justice to civil society organizations that bring complaints on behalf of children. For example, such a reference could be made in paragraph 18 since this paragraph focuses on the availability of an effective remedy, most notably, access to justice. Alternatively (or additionally), such a reference could be made in paragraphs 78 and 79, as these paragraphs specifically focus on cooperation with civil society organizations.

Harm to mental health

Paragraph 56 of the Draft explicitly recognizes harm to mental health as one of the types of harm that needs to be compensated. This is consistent with the Convention on the Rights of the Child,¹⁸ the Committee’s previous practice,¹⁹ and the practice of other international courts and human rights protection bodies.²⁰ That said, it should be noted that in the context of planetary crises-induced mental health harm, there are currently numerous challenges to rights-based approaches. For instance, while some countries have enacted domestic laws allowing individuals whose mental health has been affected by climate change-related harm to seek

¹² For examples, paragraphs 31, 33, and 78–79.

¹³ Jolene Lin and Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024).

¹⁴ Ibid. See also Samvel Varvastian, “The Advent of International Human Rights Law in Climate Change Litigation” (2021) 38(2) *Wisconsin International Law Journal* 369; Samvel Varvastian, “A Natural Resource Beyond the Sky: Invoking the Public Trust Doctrine to Protect the Atmosphere from Greenhouse Gas Emissions”, in Helle Tegner Anker and Birgitte Egelund Olsen (eds), *Sustainable Management of Natural Resources: Legal Instruments and Approaches* (Intersentia, 2018) 121.

¹⁵ Samvel Varvastian, “The Role of Courts in Plastic Pollution Governance” (2023) 72(3) *International & Comparative Law Quarterly* 635.

¹⁶ Samvel Varvastian, “Access to Justice in Climate Change Litigation from a Transnational Perspective: Private Party Standing in Recent Climate Cases”, in Jerzy Jendrośka and Magdalena Bar (eds), *Procedural Environmental Rights: Principle X of the Rio Declaration in Theory and Practice* (Intersentia, 2017) 481.

¹⁷ Varvastian, n. 4, pages 83-84 and 89.

¹⁸ New York, 20 November 1989, United Nations, *Treaty Series*, vol. 1577, p. 3, in particular, articles 17, 19, 24, and so forth.

¹⁹ For example, paragraph 41 of the General Comment No. 26 (2023) and paragraph 10.13 of the Committee’s decision in *Sacchi et al* (n. 3).

²⁰ Samvel Varvastian, “Climate Change and Mental Health: A Human Rights Perspective” (2025) 53 *Journal of Law, Medicine & Ethics*.

justice,²¹ in practice, there has been very limited engagement with the relevant science in the existing human rights-based cases that have raised the issue of climate change and mental health.

These limitations reflect various underlying challenges to the human rights approach to mental health identified by the UN Special Rapporteur on the right to health, including the longstanding practice of sidelining mental health, the focus on treatment rather than prevention, and the systemic failure to consider the social determinants of mental health.²² It is also notable that the Special Rapporteur has called for a rights-based approach to climate change mitigation and adaptation “with mental health at its heart.”²³

Therefore, as far as mental health is concerned in paragraph 56 of the Draft, it may be useful to acknowledge the importance of considering the best available science when determining compensation for this type of harm. This would be consistent with the Committee’s General Comment No. 26 (2023) that explicitly refers to the importance of considering the best available science and all relevant international guidelines when setting environmental health standards.²⁴

Transboundary environmental harm

Paragraph 63 of the Draft refers to “cross-border environmental damage”, but instead, it may be better to use “transboundary environmental harm”, which would be more consistent with the language used in the General Comment No. 26 (2023)²⁵ as well as with the language used in various specialized international environmental treaties such as the Convention on Long-Range Transboundary Air Pollution²⁶ and Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.²⁷

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²¹ For example, in the ECtHR case of *Agostinho* (n. 5, paragraph 51), it was the 2017 Portuguese law that allowed victims of wildfires, including those who experienced mental health harm, to seek compensation.

²² See the reports of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Puras, A/HRC/41/34 (12 April 2019), A/HRC/35/21 (28 March 2017), and A/71/304 (5 August 2016).

²³ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Puras, A/HRC/44/48 (15 April 2020), p. 17.

²⁴ Paragraph 42.

²⁵ For example, paragraphs 44 and 84.

²⁶ Geneva, 13 November 1979, United Nations, *Treaty Series*, vol. 1302, p. 217

²⁷ Basel, 22 March 1989, United Nations, *Treaty Series*, vol. 1673 p. 57.