

29 March 2024

The United Nations Special Rapporteur on the
Right to Development

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Re: Consultation 2024 Annual Reports

Dear Prof Deva,

I would like to thank you and your office for the opportunity to provide a submission in relation to the upcoming reports on climate change and children's engagement.

Due to word and time limitations, I have decided to focus on one question under each of the proposed reports to allow for a more in-depth and substantiated response. I hope that some of the references included may also be of use in the preparation of evidence-based reports.

A. Climate justice: Loss and damage

- 1. How is the realisation of the right to development impacted by both economic and non-economic loss and damage from climate change? How is the impact experienced differently and/or disproportionately by different individuals (e.g., children and women), groups (e.g., Indigenous Peoples) and States (e.g., Small Island Developing States)?*

In respect of the impact on children, I would like to highlight the increasing understanding of the very significant mental and emotional impact on children, quite apart from practical impacts such as flooding or climate-induced health concerns. I note that the data for relevant studies has been mostly obtained in Western, developed countries, although an important study (if not strictly concerned with children only) with 10,000 young persons aged 16-25 from 10 developed and developing countries found high levels of anxiety, distress and other emotional responses, as well as impact on functioning featured in both developed and developing countries (more so in nations already affected by the practical impacts of climate change).¹

¹ Caroline Hickman et al, 'Climate Anxiety in Children and Young People and their Beliefs about Government Responses to Climate Change: A Global Survey' (2021) 5(12) The Lancet Planetary Health e863. This study featured 10,000 participants from Australia, Brazil, Finland, France, India, Nigeria, the Philippines, Portugal, the United Kingdom and the United States of America.

Research suggests in particular that there is considerable climate anxiety amongst children and young people,² and that emotional coping strategies are increasingly important.³ Australian research has found that concerns are greater in female and gender diverse youth, as well as young people with mental-ill health.⁴ This suggests a potential disproportionate effect on already marginalised groups, at least in the relevant jurisdiction.

What may add to decreased well-being of children and young people in this regard is the fact that children *are* concerned about climate change,⁵ and have things to say, including about issues generally regarded as ‘too difficult’ for them, such as the commercial determinants of the climate crisis.⁶ However, minors are generally not part of decision-making and instead have to take to the streets to make their voice known.⁷ Children are told that the future is dire and that there are all sorts of activities that will have to be ceased to limit climate change,⁸ but they are not part of the discussions where solutions may be proposed. That is, at present, almost the only information children receive is negative, whereas they are shielded from the ‘adult conversations’ around approaches and solutions that may provide occasion for more positive emotions such as hope.⁹ Children’s exclusion thus has the potential to exacerbate the already existing anxiety, or at least may not reduce it.

² See articles and references in, eg, Terra Léger-Goodes et al ‘How Children Make Sense of Climate Change: A Descriptive Qualitative Study of Eco-Anxiety in Parent-Child Dyads’ (2023) 18(4) *PLoS One* e0284774. Katitza Marinkovic Chavez et al, ‘Growing up in Victoria, Australia, in the Midst of a Climate Crisis’ (2023) 48(2) *International Journal of Behavioural Management* 125; Ann Sanson and Marco Bellemo, ‘Children and Youth in the Climate Crisis’ (2021) 45(5) *BJPsych Bulletin* 205; Cambry Baker, Susan Clayton and Eshana Bragg, ‘Educating for Resilience: Parent and Teacher Perceptions of Children’s Emotional Needs in Response to Climate Change’ (2021) 27(5) *Environmental Education Research* 687; Ann V Sanson, Judith van Hoorn and Susie E L Burke, ‘Responding to the Impacts of the Climate Crisis on Children and Youth’ (2019) 13(4) *Child Development Perspectives* 199. Ramadan et al have highlighted the need for further and more diverse research on links between climate concern and clinically significant mental health conditions: Reem Ramadan et al, ‘Empirical Evidence for Climate Concerns, Negative Emotions and Climate-Related Mental Ill-Health in Young People: A Scoping Review’ (2023) 17(6) *Early Intervention in Psychiatry* 533.

³ *Supra* note 2; Maria Ojala and Hans Bengtsson, ‘Young People’s Coping Strategies Concerning Climate Change: Relations to Perceived Communication with Parents and Friends and Pro-environmental Behavior’ (2019) 51(8) *Environment and Behavior* 907; Maria Ojala, ‘How Do Children Cope with Global Climate Change? Coping Strategies, Engagement, and Well-being’ (2012) 32(3) *Journal of Environmental Psychology* 225.

⁴ Shu Mei Teo et al, ‘Climate Change Concerns Impact on Young Australians’ Psychological Distress and Outlook for the Future’ (2024) 93 *Journal of Environmental Psychology* 102209, 4. The greater impact on female participants (as well as those who were older and/or lived in particular developing countries) was also found in the global dataset of the study published in *The Lancet* (n 1): Susan D Clayton et al, ‘Psychological and Emotional Responses to Climate Change among Young People Worldwide: Differences Associated with Gender, Age and Country’ (2023) 15(4) *Sustainability* 3540.

⁵ Grace Arnot et al, “‘It Shows We Are Serious’: Young People in Australia Discuss Climate Justice Protests as a Mechanism for Climate Change Advocacy and Action’ (2023) 47(3) *Australia and New Zealand Journal of Public Health* 100048; Wallis, Hannah and Laura S. Loy, ‘What Drives Pro-Environmental Activism of Young People? A Survey Study on the Fridays for Future Movement’ (2021) 74 *Journal of Environmental Psychology* 101581.

⁶ Grace Arnot et al, ‘Australian Young People’s Perceptions of the Commercial Determinants of the Climate Crisis’ (2023) 38(3) *Health Promotion International* DOI <https://doi.org/10.1093/heapro/daad058>. Though note that this research was conducted with ‘young people’ (aged 15-24).

⁷ See, eg, Sanson, Hoorn and Burke (n 2); Arnot et al (n 5).

⁸ See, eg, Sanson and Bellemo (n 2) 205.

⁹ On the importance of hope in the context of coping, see the article and references by Baker, Clayton and Bragg (n 2). See in the context of young people Hickman et al (n 1).

B. The right to development of children and future generations

6. *How to create child-friendly judicial and non-judicial remedial mechanisms to address violations of children's rights in the context of development policies, projects or programmes?*

I note first and foremost that at its January 2024 (95th) Session, the Committee on the Rights of the Child decided to draft its next General Comment, No 27, 'on children's rights to access to justice and effective remedies'. A concept note is publicly available,¹⁰ but it may be possible for the office of the Special Rapporteur to obtain the latest (draft) version from the Committee to inform its report before the Comment's official release.

Considering the question at present, the first matter to consider is the level at which these remedies should be offered. Presumably this is at State level, because there appears at present no authority to set up an international mechanism (though children's rights violations in any context can be brought to the Committee on the Rights of the Child if a State has signed the Optional Protocol for the Complaints Procedure).¹¹ At State level, it will be important to consider how to work with countries that have a dualist system of law and are reluctant to adopt implementing legislation, as well as those that do not recognise the horizontal effect of human rights,¹² given that many rights violations are, in fact, the work of companies and organisations.¹³ However, these more general barriers are not an excuse for States to refrain from including discrete, but relevant rights for children in national legislation applicable to development that are enforceable and may, in addition, apply to private companies. For example, children may be given enforceable participatory rights in planning law, or autonomous access to certain government services.

Importantly, in most countries, children do not have independent access to court or other (quasi) judicial remedies, unless they sue via a guardian ad litem.¹⁴ The United Nations have long recognised that children have a right to access to justice that includes a right to access to judicial mechanisms with support, notably in relation to appropriate information provision and the availability of adult advocates for the child.¹⁵ Many countries have over the last few years

¹⁰ Committee on the Rights of the Child, Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies (2024) <<https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/gcomments/gc27/2023-01-31-gc27-concept-note.pdf>>.

¹¹ *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, opened for signature 19 December 2011, GA Res A/RES/66/138 (entered into force 14 April 2014).

¹² See Louis Schetzer, 'Voluntarily "Opting In" – The Australian Approach to Seeking Human Rights Compliance from Non-Government Entities' (2021) 27(3) *Australian Journal of Human Rights* 402.

¹³ Committee on the Rights of the Child, *General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights*, 62nd sess, UN Doc CRC/C/GC/16 (17 April 2013).

¹⁴ Organisation for Economic Cooperation and Development ('OECD'), *OECD Child-Friendly Justice Framework* (2023) 12, 40.

¹⁵ See especially United Nations High Commissioner for Human Rights ('UNHCHR'), *Access to Justice for Children. Report of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/25/35 (16 December 2013).

attempted to make judicial remedies as a whole more accessible, for example through the adoption of low-threshold tribunals,¹⁶ informal and non-adversarial procedures in specialised courts like family courts,¹⁷ court-affiliated assistance,¹⁸ or the emergence of e-courts during the pandemic, which provided an alternative to having to enter intimidating courthouses.¹⁹ Some Australian courts have adopted special Indigenous lists to provide appropriate access to court.²⁰ All these emerging initiatives are also extremely relevant to children. It may be that a judicial remedy for children is, for example, best provided by having a specialist children's list at a tribunal, with the addition of child consultants and advocates as tribunal-based assistance, rather than require a minor to attend court with a guardian. States are expected to provide these judicial remedies, but opening judicial avenues to children may take time (including to gather political will), whereas the rights issue is urgent in the case of development.

It may be that in the meantime, non-judicial remedies need to be prioritised, though that does not mean that such remedies should exclude aspects such as genuine compensation. Monetary compensation is, however, not always the key aim of children, who may simply want to see things rectified or obtain assurances of change.²¹ Such outcomes require a more collaborative approach to obtaining a remedy. Again, it may not be necessary to reinvent the wheel, but adjust the parameters of an existing one. Historically, Ombudsmen have been recognised as potential key players in the protection of children's rights.²² They offer a relatively informal dispute resolution service where children may be able to take support persons, and where a third party (the Ombudsman via its officer) helps with the investigation and outcome. In today's landscape, children's Ombudsmen often have quite a limited scope of work (government only)²³ and their workings are not always crystal clear. By contrast, countries such as Australia have increasingly established what are known as 'Industry Ombudsmen' (as well as other more hands-on Ombudsmen in, eg, the areas of health provision, discrimination law and consumer matters).²⁴

¹⁶ See, eg, Bertus De Villiers, Bertus, 'Accessibility to the Law – The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape' (2015) 39 *University of Western Australia Law Review* 239.

¹⁷ King explores the trend with reference to historically adversarial systems worldwide; Michael King, *Non-Adversarial Justice* (The Federation Press, 2014). Family law processes are discussed in ch 8.

¹⁸ Assistance can be legal or non-legal. In case of the former, eg, 'Court-Based Legal Assistance', Australian Pro Bono Centre (Web Page) <<https://www.probonocentre.org.au/legal-help/court-schemes/>>.

¹⁹ See commentary in OECD (n 14) 27, 38. Court architecture and environment is a burgeoning field of study, which also encompasses cultural safety, messaging, and appropriateness; Julian R Murphy, Elizabeth Grant and Tahlia Anthony, 'Indigenous Courthouse and Courtroom Design in Australia: Case Studies, Design Paradigms and the Issue of Cultural Agency' in Elizabeth Grant et al, *The Handbook of Contemporary Indigenous Architecture* (Springer, 2018) 495-525.

²⁰ See, eg, 'Indigenous List', *Federal Circuit and Family Court of Australia* (Web Page) <<https://www.fcfcga.gov.au/fl/indigenous-list>>.

²¹ See also the remedies section in Committee on the Rights of the Child, *General Comment No. 26 (2023) on Children's Rights and the Environment, with a Special Focus on Climate Change*, UN Doc CRC/C/GC/26 (22 August 2023) esp para [89].

²² Linda C Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Springer, 2004) ch 9 'The Ombudsman for Children: Human Rights Protection and Promotion', recently updated (and more generalised) in Linda C Reif, *Ombuds Institutions, Good Governance and the International Human Rights System* (Springer, 2nd revised ed, 2020) ch 6 'Ombuds Institutions and the Protection and Promotion of International Children's Rights'. See also the European Network of Ombudspersons for Children <<https://enoc.eu/>>.

²³ See, for example, the Dutch Children's Ombudsman (Kinderombudsman); 'Over Ons', *Kinderombudsman* (Web Page) <<https://www.kinderombudsman.nl/over-ons>>.

²⁴ Productivity Commission, *Access to Justice Arrangements* (Inquiry Report, No 72, 5 September 2014) ch 9; Bill Dee, Simon Smith and John Wood, 'Industry Ombudsman Schemes Twenty Years On: World Benchmark or Industry Captured?' (2009) 34(3) *Alternative Law Journal* 147.

These Ombudsmen have powers in respect of private providers, and the possibility of reaching a form of conciliation that includes a monetary payment or non-pecuniary result.²⁵ An Ombudsman with powers of investigation, conciliation, and some limited imposition of binding recommendations vis-à-vis public and private parties would be helpful to children too. Especially in respect of enforcing their rights within the context of development with its substantial impact from businesses, a child-friendly avenue to justice could be provided by an Ombudsman whose scope of work extends to children,²⁶ and who has the powers of an Industry Ombudsman. Once in place, the next step will be to make the presence of this ombudsman (or relevant division) known to children, for example via commercials on streaming services, or public advertisements.²⁷

One issue remains with the points made above: (quasi) judicial structures and Ombudsmen are normally connected with generally applicable rules and policies, but a lot of policies, programmes, decision and actions that affect children's rights within the context of development are, in fact, taken or happening at local levels.²⁸ Children who have their rights violated within their communities may not immediately jump to bringing cases to court, or contacting a national or state ombudsman. What children may need the most is local-level justice, at least a local point for complaints. The UN Access to Justice for Children report recognised that complaining is an important step in addressing violations and that complaints mechanisms that can be trusted by children should be available to them.²⁹ Local government should therefore not only make ways for children to participate in prior decisions, but provide accessible points for complaints and appeals. Having to present in person at the city hall or fill out a standard form online might not be accessible for children, and attention should therefore be paid to structures that allow children to lodge complaints at community centres, libraries, schools etc, that will then be forwarded to the relevant office (with the child's consent). In a recent research project, a local council also suggested that they had found having a children's corner for information, ideas and complaints at a local festival extremely helpful for informally obtaining insights into community concerns.³⁰ Inspiration for other child-sensitive means of communication and dispute resolution with children at the local level may be derived from the framework and materials associated with UNICEF's Child Friendly Cities initiative.³¹ (This also speaks to question 3).

Of course, local-level justice requires that complaints and concerns are subsequently followed-up on, which may be done through a discussion-based community approach. Not all local

²⁵ Note that resolution may pertain to 'non-legal issues' or matters where there is no strict legal entitlement, but redress is nonetheless called for; Productivity Commission (n 24) 317.

²⁶ There may simply need to be children's division, rather than a separate office.

²⁷ In its Access to Justice report (n 24), the Productivity Commission identified that 'Where services are being used, outcomes are generally good', the concern being that Ombudsmen were underused, because they were not known to the public 318, 320.

²⁸ See, eg, Geoffrey R Browne, Melanie Davern and Billie Giles-Corti, "'Punching Above Their Weight": A Qualitative Examination of Local Governments' Organisational Efficacy to Improve the Social Determinants of Health' (2019) 43(1) *Australia and New Zealand Journal of Public Health* 81; Brendan Gleeson, Stephen Pollard and John Wiseman, *Cities and Climate Action After Paris: Challenges and Opportunities* (MSSIMelb Briefing Paper 5, May 2016).

²⁹ UNHCHR (n 15) para [55].

³⁰ Data from Esther Erlings et al, 'Blue and Green with Warming Stripes: Experiences of Sustainable Child-Friendly Cities in the Greater Sydney Area' (Smart Green Cities Seed Grant) – project ongoing.

³¹ Relevant documents ('Global CFCI Guidance') can be found at the top of the page on 'Resources', *Child Friendly Cities Initiative* | UNICEF (Web Page) <<https://www.childfriendlycities.org/resources>>.

leaders will be on the side of human rights, however, and that is why it remains important that children have access to justice mechanisms at multiple levels, including access to court.

Thank you in advance for your positive consideration of this submission.

Yours sincerely,

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