

## Committee on the Rights of the Child

### Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies

#### Introduction

1. The Committee on the Rights of the Child has decided to dedicate its 27th General Comment to Children's Rights to Access to Justice and Effective Remedies. Access to justice has an important role to play in combating inequalities, challenging discriminatory practices and restoring entitlements that have been denied. It also advances accountability of State and private actors in the fulfilment of their obligations. A vast majority of children whose rights are violated do not have access to justice and do not receive remedies following violations of their rights or denial of entitlements. Children's dependent status, their lack of knowledge about their rights and the capacity to claim them as well as the lack of accessible and effective complaints mechanisms at the local level are immediate barriers. If children do turn to the courts, the fact that legal processes are rarely child-friendly, in addition to the barriers to attaining legal standing in many States, as well as economic, social and cultural factors, create further impediments for children in pursuing remedies for breaches of their rights.

2. Access to justice and to effective remedies are essential for the protection, promotion and fulfilment of all human rights. The Committee has affirmed that the right to a remedy is implicit in the Convention on the Rights of the Child, while this right is explicitly referred to in the other six major international human rights treaties. Access to justice is also an integral part of the Sustainable Development Goals (16.3).

3. Despite the recognition of this right, there remains a misconception that access to justice only relates to children alleged as, accused of, or recognized as having infringed the penal law (which is covered by the Committee's General Comment No. 24 (2019) on children's rights in the child justice system, which remains the main guidance to States in this regard). The issue of access to justice and effective remedies is much wider as explained below.

4. Children should be enabled to access relevant information and effective remedies to claim their rights, including through, child rights education, counselling or advice, and support from community-based advisors, national human rights institutions, as well as legal, para-legal and other services.

5. The Committee on the Rights of the Child has emphasised in its General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child that all children's rights must be regarded as justiciable, and it is essential that domestic law sets out entitlements in sufficient detail to enable remedies for non-compliance to be effective. General Comment No. 5 also specifies that 'where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where relevant, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by Article 39'.

6. Access to justice includes the ability to seek, individually or collectively, and obtain a just, equitable and timely remedy for rights' violations. It comprises the right to be recognised before the law and to a fair hearing, right to appeal, equal and timely access to courts, effective

judicial protection and other complaint mechanisms to bring an effective outcome. These rights are also key to the rule of law and mean that everybody – including the most vulnerable child in the most remote area – must have access to justice and remedies. Experiencing the rule of law as children will also help them to value and contribute to a rule of law culture into their adult lives.

7. While the term “remedy” can refer to several concepts (i.e. compensation, a restoration of rights, an apology or other means of redressing a violation), it should be understood, in the frame of this General Comment, as a process through which violations of human rights can be challenged, without necessarily going to a formal justice system.

8. The Committee’s concern about inadequacy of access to justice pathways for children has been a recurring theme in several general comments, days of general discussion, in concluding observations and through the growing number of individual communications and inquiry requests it received under the Optional Protocol on a Communications Procedure. This General Comment provides the opportunity for the Committee to refocus the attention of States towards building better access to justice and remedies for children.

## **Scope of the General Comment**

9. The General Comment will clarify concepts and terminology in relation to children’s right to effective remedy and children’s access to justice. It will build on the recent emphasis that the Committee has been placing on access to justice in all its mandated activities, as well as on the existing international standards and national, regional and international jurisprudence.

10. The General Comment will provide guidance on ensuring the empowerment of all children as rights-holders, including child human rights defenders, as well as to those children who are involved in justice processes (such as accused, victim, including victim of sexual violence, witnesses, those in need of care and protection, claimants and respondents). This includes guidance on ensuring their access to age-appropriate information, including on the right to access to justice and effective child-friendly remedies, adapted support and various other means.

11. The General Comment aims to address the child’s right to access justice in the context of relevant judicial and administrative proceedings, including informal or non-state justice systems; community-based, social, paralegal support services; customary and religious justice mechanisms; as well as alternative and restorative dispute resolution mechanisms. It will provide an opportunity to emphasise the importance of child participation in the design of systems for access to justice, remedies and complaint mechanisms. This will mark a significant change and lead to the development of child-centred systems which actively remove the existing barriers.

12. The General Comment will highlight the need to establish efficient and orderly complaints mechanisms and procedures that are accessible to all children in all settings and the role of national human rights institutions in that regard. It will expand on the right of children to receive advice and representation in a child-friendly manner by trained professionals with specialized knowledge when their rights have been violated.

13. The General comment will also address the procedural right of children such as their legal standing, the right to free, quality legal aid, including representation by counsel; the right to be heard and accompanied during all stages of the proceedings and be assisted by a translator and/or interpreter and support persons; and the right to be fully informed throughout the entire

procedure, together with their guardian and legal adviser, including information on their rights and decisions that could affect them.

14. The General Comment will highlight the need to mobilize sufficient human, financial and technical resources to ensure full access of the child to the right to justice and effective remedies, including to ensure appropriate budget at the central-, regional- and local levels, as well as to provide sufficient high-quality education especially on children's rights and child protection for professionals working with and for children.

15. The General Comment will clarify the role that civil society organisations, social services, lawyers and other actors can play to pro-actively support children to realise their rights, bridge the gap between children's justice needs and the capacity of the justice system to receive these complaints, submit third party interventions, develop strategic litigation and raise awareness of professionals working with and for children and the wider public.

## **Objectives of the General Comment**

16. The overall objective of the General Comment is to provide authoritative guidance to States Parties to undertake all appropriate legislative, administrative and other actions to ensure children's right to access justice and effective remedies for the full realisation of all their rights.

17. In doing so the General Comment aims to, among others:

- Promote a comprehensive understanding of the elements that are critical for ensuring access to justice and effective remedies to all children;
- Identify the practical, legal, social and cultural barriers that hinder children from accessing justice, and provide clear guidance to States on actions needed to ensure an effective remedy including on the issue of the legal capacity of children according to their age, maturity and based on the principle of evolving capacity;
- Clarify States' obligations to ensure the justiciability of all rights set out in the Convention through a range of effective and accessible complaints mechanisms and promote accountability;
- Provide guidance for the empowerment of children to know their rights, to seek justice, and to obtain redress.
- Adapt the justice system to make it child-friendly;
- Make the link and synergy between the Convention and other international mechanisms that are critical for ensuring access to justice and effective remedies for children;
- Emphasise the need to provide child-friendly safeguards to the substantive and procedural rights of children to access justice and effective remedies;
- Provide concrete examples and guidance to States to set up effective mechanisms that will support children when they need to access to justice and remedies.

## **Child participation**

18. The Committee strongly values the participation of children in all its activities including in the drafting of General Comments and intends to ensure that children's views are duly taken into consideration in this one, using a variety of means. The Committee will ensure that these views are gathered genuinely and are given due consideration, using an adequate methodology

and that children from all regions and with diverse life experiences, will have the possibility to participate effectively.

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