

**Submission to the Committee on the Rights of the Child for General Comment No. 27
on Children's Rights to Access to Justice and Effective Remedies:
Barriers to International Climate Justice for Children**

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The focus of the Committee in this call for contributions is on clarifying which actions States should take in order to implement the right of all children to access justice and effective remedies. Yet, access to international justice - including to the Committee on the Rights of the Child - by human rights victims is not equal. In this submission, we show how access to international human rights bodies, which are intended to provide a remedy to individuals unable to secure justice domestically, is limited by similar socio-economic and geographical barriers as at domestic level. In particular, we show how children are affected by these barriers and how seemingly neutral rules of admissibility impact their access to justice. This raises questions about equal access to human rights justice under international law.

In our submission, we draw on our own expertise in human rights and children's rights³ and use literature on access to international human rights bodies.⁴

Barriers to access to international justice

Every year, around 80,000 human rights claims are made around the world. By turning to a regional or international forum, individuals hope to finally have a chance to be heard and to have their day in court.⁵ Yet, when these claims eventually come to the human rights bodies, most of them never make it to the merits stage. In Europe, where the ECtHR receives tens of thousands applications every year, more than 90% of all claims are rejected as inadmissible.⁶ In Latin America, up to 80% of all petitions filed with the Inter-American Commission fall in the pre-admissibility phase. Although the precise numbers are not known, the UN Treaty Body seems to find more than 50% of all communications inadmissible each year.⁷

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³ Veronika Fikfak: Against settlement before the European Court of Human Rights, 20 International Journal of Constitutional Law 942 (2022); Non-pecuniary Damages before the European Court of Human Rights: Forget the Victim, it's all about the State. 33 Leiden Journal of International Law 335-369 (2020); with Laurence Helfer. Automating Human Rights Adjudication. Michigan Journal of International Law, 2024. Naomi Lott: Understanding Forgotten Rights. In: Holmann J and Goldblatt B (eds) The Right to the Continuous Improvement of Living Conditions: Responding to Complex Global Challenges. Hart, Oxford, pp 131-146 (2021); Establishing the Right to Play as an Economic, a Social and a Cultural Right. The International Journal of Children's Rights. 30(3):755-784. doi:10.1163/15718182-30030007 (2022); The Right of the Child to Play: From Conception to Implementation. Routledge, London (2023); A Framework for Implementing the Right of the Child to Play: Space, Time, Acceptance, Rights-Informed. Faculty of Laws University College London Law Research Paper No. 17/2024. doi:10.2139/ssrn.4859602 (2024).

⁴ Professor Fikfak is currently running a project on analysing unequal access to international human rights bodies, funded by the European Research Council (Breakthebias), see www.humanrightsnudge.com.

⁵ Antônio Augusto Cançado Trindade, 'The Right Of Access To Justice In The Inter-American System Of Human Rights Protection', *The Italian Yearbook of International Law Online* 17, 7-24 (2007); Jeremy McBride, 'Access to Justice for Migrants and Asylum-seekers in Europe', *CDCJ* (2009) 2.

⁶ ECHR Statistics: <https://www.echr.coe.int/Pages/home.aspx?p=reports&c>.

⁷ UN Statistics: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en.

In principle, claims before international human rights bodies appear demand-driven and everyone has access to international bodies. The assumption is that victims of human rights abuse are willing and capable of claiming their rights through such mechanisms. Yet, for such claims to be made, individuals (a) have to be aware of their rights and (b) have the possibility to seek a remedy, ie be capable of filing complaints that are formally accepted, or (c) have access to skilled social networks that may file complaints on their behalf.⁸ As studies have shown, however, these resources are systematically underprovided when victims of human rights abuse have a low socioeconomic status, as poverty is linked to lower levels of rights awareness,⁹ poorer literacy skills,¹⁰ and limited access to skilled social networks.¹¹ In addition, there is a considerable geographical difference in victims' access to justice. The two factors together mean that representation of claimants before international human rights bodies involves a self-selection process that favours different types of elites.¹²

First, we turn to the socio-economic barrier. Representation by a lawyer seems to be the most important factor determining access and success before international human rights bodies. In his study, Martin Scheinin, a former member of the Human Rights Committee, found that if a victim is represented by a lawyer, this is a 'more important' factor in explaining the inconsistent outcomes before UN Treaty bodies than any other elements.¹³ Having a lawyer therefore pre-determines success for numerous human rights victims. Yet, the cost of hiring a lawyer and financing the protracted route through the different levels of human rights adjudication means that 'richer litigants typically get better and more expensive representation and deploy better expert witnesses'.¹⁴ Studies have thus found, for example, that individuals with a high socioeconomic status, such as lawyers, professors, and doctors are more likely to be filing complaints before UN Special Procedures.¹⁵ In contrast, vulnerable persons, such as members of indigenous groups, children and even women, are less likely to be successful before such mechanisms. The economic differences persist also at the national level. Studies show a direct link between access to international justice and the GDP of the country against which the claim is filed. Victims of human rights abuse from poorer countries with limited socioeconomic resources are underrepresented in the complaint mechanism of the UN Special Procedures, despite its ambition of universality and impartiality. Given that domestic remedies tend to be weaker in low-income countries, it is especially problematic that international human rights

⁸ Steinert, Christoph V. (2024) Elitist Remedies? Complaint Resources and Representation in International Human Rights Bodies. *International Studies Quarterly* 68(2).

⁹ Mubangizi, John. 2005. "Know Your Rights: Exploring the Connections between Human Rights and Poverty Reduction with Specific Reference to South Africa." *South African Journal on Human Rights* 21 (1): 32–46.

¹⁰ Butler, Yuko Goto and Vi-Nhuan Le. 2018. "A Longitudinal Investigation of Parental Socioeconomic Status (SES) and Young Students' Learning of English as a Foreign Language." *System* 73: 4–15.

¹¹ WEYERS, SIMONE, NICO DRAGANO, SUSANNE MÖBUS, EVA-MARIA BECK, ANDREAS STANG, STEPHAN MÖHLENKAMP, AND KARL HEINZ JÖCKEL et al. 2008. "Low Socio-Economic Position is Associated with Poor Social Networks and Social Support: Results from the Heinz Nixdorf Recall Study." *International Journal for Equity in Health* 7 (1): 1–7.

¹² Steinert, n 7.

¹³ Martin Scheinin. 'Access to Justice before International Human Rights Bodies: Reflections on the Practice of the UN Human Rights Committee and the European Court of Human Rights', in Francioni, Francesco (ed.), *Access to Justice as a Human Right*, (Oxford: OUP 2007), 135–152.

¹⁴ Gbenga Oduntan. 'Access to justice in international courts for indigent states, persons and peoples', *Indian Journal of International Law* 58, 265–325 (2018).

¹⁵ Steinert, n7.

remedies do not fill this gap.¹⁶ From a socio-economic perspective, therefore, international human rights remedies tend to go to a self-selection of economic elites.¹⁷

Second, from a geographical perspective, who complains before international human rights bodies depends on visibility and accessibility of complaint channels. On average, international human rights remedies tend to be more available in cities compared to rural regions, as there is a superior infrastructure for information transmission.¹⁸ For example, there are ‘hot’ and ‘cold’ spots of human rights litigation. In ‘global cities’ like New York, Geneva, London, and Strasbourg, where transnational businesses increasingly cluster and human rights institutions operate, human rights lawyering has ‘evolved and become entrenched’.¹⁹ Human rights expertise clusters in these cities and a new elite subset of practitioners has emerged, a place-based identity treating local practice, national law, and human rights law as one and inseparable and professionally advantageous.²⁰ In these hot spots, lawyers are able to charge hefty legal fees and develop specialised focus as well as clientele. For example, the presence of OHCHR in a country has a positive and significant effect on the number of complaints to UN Special Procedures.²¹ This means that the “local visibility of a compliant channel” and access to experts in the hot spots influences the submission of human rights complaints. Even more, given that individuals are more likely to file complaints when remedies are locally available, international human rights remedies will be sought by those who already filed their claims domestically. This means that the rule of ‘exhaustion of domestic remedies’ potentially perpetuates existing inequalities at domestic level, as it favours those who already sue domestically. Although these remedies are, in principle, open to everyone, the studies show that the groups that enjoy access to them have been found to be primarily urban elites.²²

All these inequalities are also felt by children seeking access to justice. First, many communications brought to the Committee or other human rights bodies are brought by adults on behalf of children. This means that children have to rely on adults or parents to access justice. This means that they depend on the socioeconomic and geographical location of adults, but also depend on adults’ awareness and interest to bring their claims on their behalf. In this context, studies have underlined that children – as rights claimants – are more vulnerable than other groups. ‘The rhetoric of rights is mainly useful to agents who are largely powerless but *able* to exert at least rhetorical pressure from below. However, children are more fundamentally but less permanently powerless. They are unable to claim their rights and exert political pressure. Instead, **their main remedy is to grow up**. Because this remedy cannot be achieved rapidly they are peculiarly vulnerable and must rely more than other powerless groups on social practices and institutions that secure the performance of others’ obligations. The great disanalogies between children’s dependence and that of members of oppressed social groups

¹⁶ Steinert, n7.

¹⁷ *ibid*.

¹⁸ Kenny, Avi, Gaurab Basu, Madeleine Ballard, Thomas Griffiths, Katherine Kentoffio et al. 2015. “Remoteness and Maternal and Child Health Service Utilization in Rural Liberia: A Population-Based Survey.” *Journal of Global Health* 5 (2): 020401.

¹⁹ Tommaso Pavone, *The Ghostwriters: Lawyers and the Politics behind the Judicial Construction of Europe* (2022).

²⁰ *Ibid*.

²¹ Steinert, n7.

²² *ibid*.

suggest that the rhetoric of rights can rarely empower children.²³ In many ways, therefore, the current set up of rights claiming does not empower children, but their parents or other adults, who are often pursuing political or other goals. In this process, the voices of children can remain or become lost.

In addition, the international legal processes can be especially burdensome for children and can have a particularly negative impact on them. The CRC notes that '[l]itigation is often a lengthy process, and supranational bodies generally require the exhaustion of domestic remedies prior to filing a complaint'.²⁴ An average case takes between 5 and 8 years to reach the international level and then another 1-2 years to be considered by the international human rights body. This means that on average, the requirement to exhaust domestic remedies may delay the resolution of a case by at least half to a full decade. This delay is particularly critical for children as childhood is a period of fast-paced change and development. The adage 'justice delayed is justice denied' is thus particularly pertinent. Although the requirement for exhaustion of domestic remedies prior to filing a complaint is intended to give an opportunity to the national legal system to redress the wrong first without a need to trigger international oversight, often children are unable to obtain justice at home. This means that they will spend much of their childhood undertaking legal proceedings through domestic systems, an effort that may detract from time for education, play, recreation, the development of skills and interests, and enjoyment of their childhood, but may also have detrimental impact upon their mental health. For example, a study on child sexual abuse cases found that children encountered anxiety around legal proceedings due to the anticipation of the outcome of cases, and a lack of information available to them.²⁵ The study also found that judgments enable children to 'make closure and move on in life'.²⁶ Similarly, research points to children's experiences of court proceedings as 'scary', stressful, or distressing.²⁷ Further, prolonged or repeated involvement in the legal proceedings is shown to 'have adverse effects' on children²⁸ and this can have a dissuasive impact on children seeking justice before domestic or international institutions. Such delays are even more likely when legal matters revolve around environmental matters, such as transboundary harm, which are resource intensive and require lengthy assessment of

²³ Onora O'Neill, *Children's Rights and Children's Lives*, 98 ETHICS 445 (1988).

²⁴ UNCRC Committee (2023) General Comment No. 26, para 86.

²⁵ Back C, Gustafsson PA, Larsson I, Bertero C (2011) Managing the legal proceedings: An interpretative phenomenological analysis of sexually abused children's experience with the legal process. *Child Abuse & Neglect*. 35:50-57. doi:10.1016/j.chiabu.2010.08.004, at 54.

²⁶ Ibid. Concern on the length of duration of family law cases is common, but the focus is often on the psychological harm on the child of the instable or harmful living conditions, or the stresses within the home that 'peak' around court hearings, rather than the legal process itself. Dickens J, Becket C, Bailey S (2014) Justice, speed and thoroughness in child protection court proceedings: Messages from England. *Children and Youth Services Review*. 46:103-111. doi:10.1016/j.childyouth.2014.08.010; Tisdall EKM, Bray R, Marshall K and Cleland A (2004) Children's Participation in Family Law Proceedings: A Step Too Far or a Step Too Small?. *Journal of Social Welfare and Family Law*. 26(1):17-33. doi:10.1080/01418030410001694387.

²⁷ Tisdall EKM, Bray R, Marshall K and Cleland A (2004) Children's Participation in Family Law Proceedings: A Step Too Far or a Step Too Small?. *Journal of Social Welfare and Family Law*. 26(1):17-33. doi:10.1080/01418030410001694387.; Rodriguez-Pellejero JM, Mulero-Henriquez I, Santana Amador Z (2024) Real-time stress monitoring in a child-friendly court: a repeated measures field study. *Humanities and Social Science Communications*. 11:913. doi:10.1057/s41599-024-03410-w.; Lipovsky JA (1994) The Impact of Court on Children: Research Findings and Practical Recommendations. *Journal of Interpersonal Violence*. 9(2). doi:10.1177/08862609400900200.

²⁸ Lipovsky (1994).

evidence.²⁹ In such climate-related claims, where children's rights are especially involved, the detrimental impact may be even greater.

Recommendations

We believe that in considering the issue of access to justice, international courts and treaty bodies – including the Committee on the Rights of the Child – should:

- Understand and acknowledge the close link between access to domestic and international justice;
- Understand that the same barriers that operate at domestic level also influence or even determine claims at international level and that children are particularly powerless in claiming access;
- Explore and investigate how rules on admissibility operate (including exhaustion of domestic remedies, time limits, and standing requirements) to potentially exclude children from accessing international justice and where possible, loosen those rules to allow children who have not been able to access justice at home to turn to international level for protection;
- At all points, carefully consider who is making the claim and whether children's voices are being sufficiently heard;
- Particularly consider the relevance of exhaustion of domestic remedies in climate justice cases that involve multiple States and transboundary harms.

²⁹ UNCRC Committee (2023) General Comment No. 26, paras 82-86.