Norwegian Human Rights Institution

Committee on the Rights of the Child
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LETTER

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

1. Introduction

The Norwegian National Human Rights Institution (NIM) welcomes the opportunity to provide input to the Draft General Comment No. 27 on children's right to access to justice and to an effective remedy (Draft General Comment).

NIM is an independent public body established by the Norwegian Parliament to strengthen the implementation of human rights in Norway.[1] According to the mandate laid down in law, we may participate in international cooperation to promote and protect human rights. Children's rights are a key focus within our mandate and are among our current priorities.

Recalling our previous submission as of 2024, commenting on the Concept Note, this contribution will take the Committee's Draft General Comment as a starting point.[2] NIM is pleased to note that the Committee in the Draft General Comment, to a large extent, has taken into account our input to the Concept Note on various topics. This includes the underscoring of the relevance and applicability of the right to an effective remedy in other international human rights treaties (para. 14), the necessity of adjusting statutes of limitation in cases involving children (para. 18 (a) (v), and the consistent emphasis on the need for a child-sensitive approach to the issue of access to justice throughout the Draft.

[1] NIM has 'A status' accreditation with the Global Alliance of National Human Rights Institutions (GANHRI), which means we comply with the requirements of independence, impartiality and integrity under the Paris Principles.
[2] NIMs previous submission is available on NIM's webpage: NIM brev

In the continued work on the General Comment, NIM encourages the Committee to consider some of our previous inputs, which will be reiterated and elaborated on in the following sections.

2. Anchoring the right to an effective remedy and access to justice

Reference is made to the Draft General Comment para. 13. Here, the Committee suggests that children's right to access to justice and to an effective remedy is "implicit in the Convention, including under article 4 in relation to the obligation to undertake all appropriate measures for the implementation of the rights recognized under the Convention."

NIM believes that Article 4 of the CRC may be one possible legal basis for the recognition of an implicit right to an effective remedy, as it encompasses the obligation to take all appropriate measures to implement the rights in the Convention. However, we reiterate our suggestion to elaborate on this interpretation, given the absence of a specific provision explicitly recognizing this right. In particular, we suggest outlining how an implicit right to an effective remedy would be in line with the methodology outlined in Articles 31-33 of the Vienna Convention on the Law of Treaties (VCLT).

According to the VCLT, the provision should be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. The context of the treaty includes, as defined in the VCLT art. 31 (2) of, inter alia, the text of the Convention, including its preambles and annexes. Hence, we will make some comments on how the various provisions and the preamble of the Convention may guide the interpretation of the Convention and the question of anchoring a right to an effective remedy.

Several of the provisions of the Convention give rights to children without an explicit procedural requirement, for instance Articles 14, 20 and 37 c. Other provisions include obligations to take "appropriate measures" without containing an explicit procedural requirement, for instance Article 19.

A supplementary legal basis may be to anchor children's right to access to justice directly in the different provisions of the Convention, interpreted based on their wording and in light of the Treaty's purpose and context.

For some provisions, a right to procedural safeguards may fall under the Convention right as "appropriate measures" to fulfill the right in question or to avoid arbitrary or unlawful interference.

This interpretation has support in the Committee's practice outlined in General Comments interpreting the Convention.[3]

The committee may also refer to the preamble of the CRC, which states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

The European Court of Human Rights has taken a similar interpretive approach with respect to procedural rights. This applies in cases where the convention right in question does not explicitly include a procedural provision, such as Article 8, which guarantees the right to respect for private and family life. The European Court of Human Rights has reasoned that this is necessary for the effective protection of the right.[4] Over time, the Court has established this consistent tradition of interpreting the European Convention on Human Rights as encompassing procedural safeguards in decision-making processes related to measures that interfere with a convention right. The Court has also interpreted procedural rights as inherent in substantive rights that impose positive obligations on the state.

Ultimately, we refer to the VCLT Article 31 (3) litra c, stating that there shall be taken into account, together with the context, "any relevant rules of international law applicable in the relations between the parties". The fact that children are subject to rights under other international human rights treaties which contain specific provisions on a right to an effective remedy, as acknowledged by the Committee in the Draft para. 14, should also inform the interpretation of the Convention of the Rights of the Child.

3. Accessibility, including procedural rights for children

Reference is made to the Draft General Comment para. 29 and 30.

As stated in our previous submission, NIM acknowledges that children will need to rely on others to act on their behalf in many cases because of their lack of legal competence. NIM agrees with the Committee that while parents and legal guardians in many cases will be present and supportive, there may be situations where the parents are not in position to play the role as legal guardians. The Draft General Comment also mentions the possible tension between the parents and the child in the question of whether to proceed with the case or not, as outlined in para.

[3] General Comment No. 5 para. 24, and General Comment No. 17 para 57 (g).

[4] See for example V.I. v. The Republic of Moldova (38963/18) para. 123-129, T.P. and K.M v. The United Kingdom (28945/95) para. 71-73, G.I.E.M. S.R.L. and Others v. Italy (1828/06, 34163/07 and 19029/11) para. 302, and Fernández Martínez v. Spain, (56030/07) para. 147.

15 e), emphasizing the importance of giving due consideration to children's views in this regard.

Considering the importance of adequate representation of children, NIM encourages the Committee to further elaborate on the State Parties' obligations to ensure the right of the child to adequate representation. Whereas the Draft General Comment suggests that the court *may* decide to appoint an appropriate person to act as a guardian, curator or tutor for the purposes of litigation (para. 29), NIM encourages the Committee to consider emphasizing the necessity for courts to *ex officio* appoint a guardian ad litem in cases where representing the child by their parents is not in the child's best interest. Thus, NIM suggests that this should not merely be pointed out as a possibility for the State Parties, but rather as an obligation. Further, NIM believes that this obligation should also apply when the court (or another decision-making body) is informed that the child is unable to obtain the required consent to file a complaint from their natural parent, yet it is deemed in the child's best interest to have the case reviewed. Consequently, a child who contacts the courts or other decision-making bodies should be informed and helped with adequate representation, also when the child does not meet the formal requirements for filing a complaint due to lack of parental or other consent.

Moreover, the Draft General Comment underscores the importance of the availability of judicial and non-judicial mechanisms that children can access directly and without parental consent, in consideration of the maturity and best interests of the child (para. 30). While it is important to allow State Parties a margin of appreciation in determining the conditions for such direct access, we urge the Committee to offer some more guidance on this issue. Such guidance should strike a careful balance between the child's right to self-determination, the need for assistance, and the right to protection.

In its considerations on procedural capacity and the opportunity to access mechanisms directly, the Committee may also consider the need for coherence within domestic legal systems regarding the various age limits for self-determination and the ability to exercise procedural capacity in related areas. The Committee has consistently recommended State Parties to grant children the right to self-determination in different contexts, such as the right to consent to medical treatment or to decide whether or not to join organizations.[5] However, if a child is unable to file a complaint concerning, for instance, inadequate or lack of health treatment without their parents' consent – despite having the right to make decisions about health matters – the right to self-determination becomes only

[5] General Comment No. 20 para. 39.

partial. This scenario may compel children to disclose information to their parents that they are entitled to keep confidential.

Therefore, the Committee's guidance should emphasize the importance of aligning age limits and conditions for procedural capacity with the recognized rights to self-determination, ensuring that children can fully exercise these rights without unnecessary contradictions or limitations.

4. Conclusion

NIM appreciates the opportunity to contribute with input to the General Comment, which we believe holds significant importance for children all over the world.

We would be pleased to provide further clarification or elaboration on any of the points outlined above through continued correspondence with the Committee. We consent to our names or NIM's name and submission to be credited publicly.

Best regards

for the Norwegian Human Rights Institution

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