

CLIMATE CHANGES IN THE PRACTICE OF THE UN COMMITTEE ON THE RIGHTS OF A CHILD

ABSTRACT: Environmental degradation and climate changes have been the focus of the international community for decades. The impossibility of full and effective enjoyment of human rights caused by climate changes has been a constant reminder of the fact that an urgent reaction is required. However, what about the rights of those who depend on us and whose voices we have avoided hearing? What about the youngest among us, about whose future we selfishly and without any right decide? The latest research shows that children suffer more than adults from the consequences of climate changes. In the paper, the author highlights the lack of the child's rights protection by the UNCRC, violated by side effects of climate changes, and the dedication of the CRC to provide the protection of these rights through the General comment no. 26. Analyzing the process of creating the General comment no. 26 and its content, it was shown how the joint participation of both children and adults can lead to results giving hope for the future. Nonetheless, in concluding remarks the author expresses her doubt regarding the abidance of stipulated obligations for the States, because of the non-committal nature of the CRC's General comments, calling into question the significance of the General comment no. 26 itself.

Keywords: *climate changes, child's rights, the UNCRC, the CRC, General comment no. 26.*

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1. Introduction

Around 4.5 billion years ago, our home arose. The Earth. Home of poets, scientists, artists, and all other living beings. Over time it has changed and evolved, passing through so many different phases like the rest of her inhabitants. Some of those changes made her beautiful, as she is. And yet, some of them cause her to suffer, unable to resist them. Most of the time, they are a result of natural causes and evolution, a reminder that nature has its own will and pace. However, in the last few centuries, the human factor has been shown more devastating and dangerous, and with time passing by, humans, somehow, have forgotten they are not alone in this wonderful world.

Accelerated progress of the human race, initiated by the emergence and development of industrialization, led to the violation of the natural balance causing increasingly stronger climate changes (Kostić & Matijašević, 2020, p. 278). Today they represent one of the biggest risks to the planet's survival. In 2007 UNFCCC indicated that in the following decades, billions of people will be seriously affected by the consequences of climate change, which will be reflected in the shortage of basic human needs, such as food and water, as well as the deterioration of health conditions and quality of life (UNFCCC, 2007). Although all around the globe children suffer from different kinds of difficulties and misuse, climate change affects all of them, without no difference, since it is a global phenomenon with catastrophic side effects. As the youngest and the most vulnerable part of the human population, they are usually not aware of the circumstances around them and depend on the decisions that we make. Kofi Annan¹(2012) once said: "It is all our responsibility to ensure our children and grandchildren inherit a sustainable world". But, are we doing enough?

2. Climate change and child's rights

As the main world organization, United Nations recognized the importance of child protection and dedicated special attention to the youngest members of society. In this light, on November 20 of 1989, the United Nations adopted the Convention on the Rights of the Child (UNCRC), the treaty of human rights which is the one most commonly ratified at the universal level (Sanz-Caballero, 2013, p. 2). Since climate change is one of the biggest threats to life and the world as we know it with "the deep inequality in its causes and its impacts" (Sanson & Burke, 2019, p. 343), the enjoyment of human rights

¹ Secretary-General of the United Nations from 1997 to 2006.

is undeniably conditioned by this matter. In Sanz-Caballero's words (2013), "different climatic phenomena have different effects on different human rights that children should enjoy" (p. 2). So, does the UNCRC protect children from climate change, enabling them to enjoy the rights they are entitled to?

Being the core of civil society, children are entitled to some extra specific human rights proclaimed by the Convention, like the right to rest and leisure, the right to play, the right to be cared for by their parents, and many others. However, all of them suffer and cannot reach full and effective enjoyment because of the influence of climate change. In line with Article 3 (1) of the UNCRC, regarding proceedings of responsible bodies, "in all actions concerning children...the best interest of the child shall be a primary consideration". Nonetheless, the term "action" according to the General Comment No. 14² can be interpreted as a lack of action by the responsible bodies, which in this case can be related to climate inaction (Shields, 2021, pp. 18-19). According to Article 24 of the UNCRC, every child has a right to the highest attainable health standards and the States Parties of the Convention have a crucial role in its realization. To enable full implementation of this right, they should primarily contribute to reducing disease and malnutrition, by providing clean drinking water and suitable nutritious food, in the first place. To do so, environmental pollution should be treated with special attention as it is a contributing factor that also leads to climate change. In achieving this goal, the Kyoto Protocol with its Doha Amendment should have been stable support, reducing the greenhouse gas concentration in the atmosphere, especially CO₂ as the main anthropogenic greenhouse gas (Ebi & Paulson, 2007, p. 214), and mitigating the main cause of climate change. As a supporting pillar to these plans, the Paris Agreement from 2015 should contribute to reducing global warming by keeping temperatures "preferably to 1.5 degrees Celsius". Nonetheless, it seems that the plans and intentions of the State Parties of the three mentioned, and above all, the necessity for urgent change, in reality, does not correspond to the actual willingness of the most developed industrial countries, as the biggest polluters, for change. According to the latest data, global temperatures in 2022 were 1.6 degrees Celsius above the average, and the last nine years were the warmest years successively in the Earth's history (National Aeronautics and Space Administration [NASA], 2023). If no significant change is instituted and acted upon, it is predicted that between 2030 and 2050 around 250 000 additional deaths per year will

² General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) was adopted by the UN Committee on the Rights of the Children in 2013.

be caused by climate change (World Health Organization [WHO], 2021), and already today around 1 billion children feel its impact living in areas considered to be extremely high risked (United Nations International Children's Emergency Fund [UNICEF], 2021).

Among all of the climate and environmental hazards, it is the heatwaves, cyclones, flooding, water scarcity, vector-borne diseases, and air and lead pollution that is the most devastating to the human population. However, since children are more sensitive than adults, the consequences of these hazards and stresses are more disastrous to their young, fragile lives. For instance, high temperatures cause extreme heatwaves which result in serious health risks for children since they are not fully able to regulate their body temperature. Water scarcity is a direct consequence of climate change, disabling child's right to clean drinking water, and at the same time, causing a nutrition crisis with increasingly severe droughts and preventing children to enjoy one of their basic rights- the right to food (UNICEF, 2021).

Based on the above-mentioned it seems that the UNCRC "was not meant to protect children from the consequences of climate change" (Sanz-Caballero, 2013, p. 2).

3. Climate change in the practice of the UN Committee on the Rights of the Child

"For every child, hope... for every child, opportunity...for every child, dignity"³ (UNICEF: History of a logo).

In accomplishing the mission of the UN in providing protection and security to children at the universal level, the Committee on the Rights of the Child (CRC) has the main role, of monitoring the implementation of the UNCRC by its State parties. Prior to 2021, the main focus of the CRC was the protection of children through the UNCRC and its Optional Protocols⁴,

³ Official logo of UNICEF since 2016.

⁴ General Assembly of the UN adopted three Optional Protocols to the Convention on the Rights of the Child, which all together represent legal framework of the UN Committee of the Right of the Child and most important documents for the child rights protection. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict were both adopted 25 May 2000 by Resolution A/RES/54/263 at the fifty-fourth session of the General Assembly of the UN and entered into force 12 February 2002; Optional Protocol to the Convention on the Rights of the Child on a communications procedure was adopted 19 December 2011 by Resolution A/RES/66/138 at the sixty-sixth session of the General Assembly of the UN and entered into force 27 January 2012.

however, since the Convention has shown to be futile in the fight against the consequences of climate change, the CRC has become aware that an urgent and serious reaction is needed in this domain. The first step on this journey was the global conference held in 2016 by the UN which successfully, for the first time, linked children's rights with the environment at the international level (General Comment No. 26). Based on years of research and hard work, the CRC decided to draft the General Comment No. 26 in June 2021, which would dedicate special attention to the child's rights and the side effects of climate change and invited all State parties and stakeholders to comment on its concept note and later the draft itself. In the concept note, the CRC stated the disturbing consequences of environmental harm, including climate change, on human rights, ecosystems, and biodiversity, and pointed out the devastating fact that yearly around 1.5 million children under the age of 5 die from the side effects of the different environmental hazards (Committee on the Rights of the Child [CRC], 2021).

Based on the scope and objectives of the General Comment No. 26 presented in its concept note, 19 State parties, among them those which are the least polluting and the most affected by the side effects of climate change, submitted their comments indicating the drastic situation on their territory, suggesting different solutions to the subject matter and pointing out the necessity and different ways of including responsible bodies of the State parties in overcoming this alarming problem. Being aware that resolving this matter depends mostly on the opinion and actions of adults, the CRC decided to involve the global community, including State parties and experts from relevant fields in the creation of the General Comment No. 26. But, most importantly, it turned directly to those who suffer the most from neglecting the existence of this catastrophic global phenomenon- children.

The process of creating the General Comment No. 26 involves two phases followed by multiple and diverse consultations and workshops, entrusting the stakeholders from extremely high-risked areas, in particular children and young people, a key role in its drafting procedure. Since the CRC recognized the importance of children's voices, in the period from 31 March 2022 until 30 June 2022, 7.416 children from 103 countries contributed to the development of the first Draft General Comment No. 26 by sheering their opinions, thoughts, experiences, and feelings of environmental damage and climate change, including their right to environmental education, right to have a say and be taken seriously by adults and governments, and right to access information and support (Committee on the Rights of the Child [CRC], 2022a). Through their comments, the children expressed anger and dissatisfaction with the adults

they consider the main cause of the current situation, especially emphasizing the inability to enjoy their basic rights such as the right to education, the right to play, the right to breathe clean air, and the right to have access to clean drinking water. What certainly represents a surprising fact is that 15% of children who participated in the survey and live in environmentally high-risked areas, East and South-East Asia in particular, stated they do not feel the consequences of climate change (Committee on the Rights of the Child [CRC], 2022b). This represents a very devastating fact since those areas have been affected for decades by environmental hazards, and for those children and their short young lives this kind of living environment is perceived as “normal”. In other words- they do not know for better.

As the realization of the aforementioned child’s rights mostly depends on the adults, the CRC included the global community in the process of creating the General Comment No.26, as its inseparable part. Through 2021 and 2022, 110 participants from UN offices, States, and NGOs contributed with their participation in surveys and multiple workshops regarding the impact that environmental hazards have on children’s lives. They mostly emphasized that climate change affects children more than adults, their physical and mental health in particular, caused by the environmental degradation and loss of safe and healthy outdoor spaces, and highlighted multiple problems and children risks this situation provokes, like necessary children migration, separation from their parents, lack of nutritious food, sexual exploitation, child trafficking, etc. (Committee on the Rights of the Child [CRC], 2022c). However, participants showed disagreement regarding multiple issues, among which are the obligations of States related to environmental concerns, intergenerational equity, and terminological clarification of the “appropriate protection”(CRC, 2022c).

Based on thorough work and long-term research, the CRC was able to form and publish the Draft General Comment No. 26 on children’s rights and the environment with a special focus on climate change in 2022. It emphasizes the significance of the children’s efforts in raising awareness of the importance of environmental and climate justice, as well as “historical contributions to human rights and environmental protection” (Committee on the Rights of the Child [CRC], 2022d). Through five thematic sections, special attention is dedicated to the specific rights of the UNCRC, due to their evident connection to the environment, the general obligations of States, the right to a clean, healthy, and sustainable environment, and climate change. The CRC categorically listed all child’s rights enshrined in the UNCRC that are violated or cannot be enjoyed as a result of environmental hazards,

by giving a profound explanation of the environmental impacts which are causing the violation and recommending measures for States to prevent or reduce the consequences of it. Concerning the general obligations of States, they are aimed at ensuring a healthy and clean environment, separately or through international cooperation, which will lead to the full and effective enjoyment of all child's rights, as well as to enable access to necessary and full information regarding the environment, including the right to be heard, to express an opinion, or the right to an effective remedy caused by environmental issue (CRC, 2022d).

Since it can be seen with the accordance in abovementioned that the CRC highly values the opinions and comments of the versatile stakeholders regarding this matter, the Draft General Comment No. 26 is being evaluated by a global community, States, and especially children and young people before it is published as a General Comment in 2023.

4. Conclusion

Although the CRC dedicated so much time and effort to findpossible solutions to protect child's rights and their young lives from environmental hazards, the question is will the General Comment No. 26 alongside the UNCRC be powerful enough to meet set-up goals. As part of the general community in their comments of the Draft General Comment No. 26 pointed out, the General Comments passed by the CRC, are not binding for States, therefore it is questionablewhether the States will comply with the stipulated obligations and provide childrenwith a safe environment.All in all, adopting and publishing the General Comment No. 26 can be the first step to a better future. However, taking into consideration that it will take 7 years from the day that idea was born until its realization, as well as the intensity and drastic increase in the number ofendangered adults and children year after year, it is questionable if some new binding document will be timely adopted if the General Comment No. 26 alongside the UNCRC does not produce positive results.

We are part of nature, but we naively believe that we are above it. We only have one home, but we obviously do not appreciate it like we are supposed to. If we do not act today, it may not be worth it anymore.

Children are the future. So, how can the future be if our present is stealing time?

Children deserve to have a childhood. Children deserve to be loved and respected. Children deserve to be happy. Children deserve to have a future. Children deserve...

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KLIMATSKE PROMENE U PRAKSI KOMITETA UN ZA PRAVA DETETA

REZIME: Degradacija životne sredine i klimatske promene su decenijama u fokusu međunarodne zajednice. Nemogućnost potpunog i efikasnog uživanja ljudskih prava uzrokovana klimatskim promenama je stalni podsetnik da je neophodna hitna reakcija. Međutim, šta je sa pravima onima koji zavise od nas i čije glasove izbegavamo da čujemo? Šta je sa najmlađima među nama, o čijoj budućnosti mi sebično i bez ikakvog prava odlučujemo? Poslednja istraživanja pokazuju da deca više pate nego odrasli od posledica klimatskih promena. U radu, autor naglašava nedostatak zaštite prava deteta od strane Konvencije Ujedinjenih Nacija o pravima deteta, koja su povređena usled posledica klimatskih promena, i posvećenost Komiteta Ujedinjenih Nacija za prava deteta da obezbedi zaštitu ovih prava kroz Generalni komentar br. 26. Analizirajući proces stvaranja Generalnog Komentara br. 26 i njegov sadržaj, prikazano je kako zajedničko učešće dece i odraslih može da dovede do rezultata koji pružaju nadu za budućnost. Ipak, u zaključnim napomenama autor izražava sumnju u pogledu poštovanja propisanih obaveza od strane dražava članica, usled neobavezujuće prirode Generalnih komentara koje donosi Komitet Ujedinjenih Nacija za prava deteta, dovodeći u pitanje značaj Generalnog komentara br. 26.

Ključne reči: klimatske promene, prava deteta, Konvencija Ujedinjenih Nacija o pravima deteta, Komitet Ujedinjenih Nacija za zaštitu prava deteta, Generalni komentar br. 26.

References

1. Committee on the rights of the Child [CRC], (2021).Concept note: General comment on children's rights and the environment with a special focus on climate change. Downloaded 2023 February 18 from https://www.ohchr.org/en/treaty-bodies/crc/concept-note-general-comment-childrens-rights-and-environment-special-focus-climate-change#_ftn3
2. Committee on the Rights of the Child [CRC], (2022a). General Comment Questionnaire for Children and Young People, p. 1-9. Downloaded 2023 February 19 from https://childrightsenvironment.org/wp-content/uploads/2022/03/EN_Child-Friendly-Questionnaire-GC-26.pdf
3. Committee on the Rights of the Child [CRC], (2022b). Report of the first Children and Young people's consultation, p. 1-34, Downloaded 2023 February 19 from <https://childrightsenvironment.org/wp-content/uploads/2022/09/Report-of-the-first-Children-and-Young-Peoples-Consultation.pdf>
4. Committee on the Rights of the Child [CRC], (2022c). General Comment No. 26 - Analysis of the online consultations and 3 thematic workshops with the global community, p. 1-23. Downloaded 2023 February 19 from <https://childrightsenvironment.org/wp-content/uploads/2022/10/Report-Analysis-of-Global-Community-Questionnaire-Contributions.pdf>
5. Committee on the Rights of the Child [CRC], (2022d). Draft General Comment No. 26, Children's rights and the environment with a special focus on climate change, p. 1-20. Downloaded 2022 February 18 from https://childrightsenvironment.org/wp-content/uploads/2022/11/First-Draft_General-Comment-No.-26_November-2022.pdf
6. Convention on the Rights of the Child (1989). UN. Downloaded 2023 February 10 from <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
7. Ebi, L. K. & Paulson, A. J. (2007). Climate change and Child, *Pediatric Clinics of North America*, 54 pp. 213–226, DOI: 10.1016/j.pcl.2007.01.004
8. General Comment No. 26.,Downloaded 2023 February 17 from <https://childrightsenvironment.org/faq/>
9. Kofi Annan Foundation, (2012). Immediate Action and Long-Term Collective Leadership to Solve the Climate Crisis. Downloaded 2023 February 13 from <https://www.kofiannanfoundation.org/speeches/immediate-action-and-long-term-collective-leadership-to-solve-the-climate-crisis/>

10. Kostić, D., & Matijašević, M. (2020). Klimatske promene i ekološka bezbednost ostrvskih država [Climate change and environmental safety island countries]. *Kultura polisa*, 17(43), pp. 277–287.
11. Micronesia, (2021). Response by the Federated States of Micronesia to the Call of the Committee on the Rights of the Child for Comments on Children's Rights and the Environment with a Special Focus on Climate Change. Downloaded 2023 February 16 from <https://www.ohchr.org/en/documents/general-comments-and-recommendations/draft-general-comment-no-26-childrens-rights-and>
12. National Aeronautics and Space Administration [NASA], (2023). Downloaded 2023 February 16 from <https://climate.nasa.gov/news/3246/nasa-says-2022-fifth-warmest-year-on-record-warming-trend-continues/>
13. Sanson, V. A., & Burke, E. L. S. (2019). Climate change and children: An Issue of intergenerational Justice, In: Balvin, N., & Christie, D., J. (eds.) *Children and Peace, From Research to Action* (pp. 343-362), Cham: Springer Open, DOI: 10.1007/978-3-030-22176-8_21
14. Sanz-Caballero, S. (2013). Children's rights in a changing climate: a perspective from the United Nations Convention on the Rights of the Child. *Ethics in science and environmental politics*, 13(1), pp. 1-14, DOI: 10.3354/esep00130
15. Shields, S. (2021). *A case for change: child rights versus climate change: MSc Thesis*, London: Imperial College London, Faculty of Natural Sciences Centre for Environmental Policy
16. The Republic of Kenya, (2021). Submissions on the General Comment on Children's rights and the environment with a special focus on climate change. Downloaded 2023 February 16 from <https://www.ohchr.org/en/documents/general-comments-and-recommendations/draft-general-comment-no-26-childrens-rights-and>
17. UNFCCC (2007). Downloaded 2023, February 10 from https://tools.niehs.nih.gov/cchhl/index.cfm/main/detail?reference_id=2377
18. UNICEF: History of a logo.(2016). Downloaded 2023 February 17 from <https://www.unicef.org/about-unicef/unicef-logo-history>
19. United Nations [UN]. (2000). Resolution A/RES/54/263, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Downloaded 2023 February 18 from <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child>
20. United Nations [UN]. (2000). Resolution A/RES/54/263, Optional Protocol to the Convention on the Rights of the Child on the involvement

of children in armed conflict, Downloaded 2023 February 18 from <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>

21. General Assembly of the United Nations. (2012). Resolution A/RES/66/138, Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Downloaded 2023 February 18 from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/467/10/PDF/N1146710.pdf?OpenElement>
22. United Nations International Children's Emergency Fund [UNICEF]. (2021). *The climate crisis is a child rights crisis*, New York: United Nations Children's Fund (UNICEF), Downloaded 2023 February 16 from <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf>
23. World Health Organization [WHO]. (2021). Downloaded 2023 February 16 from <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>