

COMMITTEE ON THE RIGHTS OF THE CHILD

**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION ON THE  
DRAFT GENERAL COMMENT ON CHILDREN’S RIGHT TO ACCESS TO JUSTICE  
AND TO AN EFFECTIVE REMEDY**

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## INTRODUCTION

1. The International Commission of Jurists (ICJ) welcomes the opportunity to provide input into the Committee on the Rights of the Child's ("the Committee") elaboration of a General Comment (GC) on Children's Right to Access to Justice and to an Effective Remedy under the Convention on the Rights of the Child ("the Convention").
2. The present set of proposals aims to strengthen the effective enforcement of children's rights within justice systems, both from practical and normative perspectives, with particular attention to the specific needs of children in vulnerable situations.
3. The ICJ considers that it is important that the forthcoming GC on access to justice and effective remedies (A2JER) reflect children's developmental characteristics, including their evolving cognitive, emotional and social maturity. Children are not merely small adults, their sense of justice, response to violations and ability to claim their rights develop in accordance with age, maturity and the availability of external support. Taking these factors into account is essential to ensure that justice systems function in a truly child-centred manner.
4. The ICJ emphasizes the need to guarantee child-centred procedures. It is crucial that legal frameworks and practices acknowledge children's different legal status, communication needs, and the fact that they often depend on adults to access justice. The ICJ's proposals aim to ensure that A2JER be not merely a declarative right, but a genuinely available and effective tool for every child.

## SECTION I.

5. In the introductory part of the General Comment, insert the following para: ***"1a. The Committee emphasizes that access to justice for children must be understood in the context of their situation as individuals undergoing continuous cognitive, emotional and social development. Due to their evolving capacities, children perceive and respond to rights violations differently from adults. Their capacity to perceive injustice and use legal systems is influenced by age, maturity, experience and the availability of support. Justice systems must therefore be designed and operated in a manner that reflects children's emotional and psychological development, to ensure that their rights are not only formally recognized but are also accessible in practice."***
6. In para 1 include: proper access to "justice and" any kind of remedy, "let alone an effective one." Instead of "disproportionately affect children" at the end of para 1, insert **"affect children in specific ways."**<sup>1</sup>
7. In para 2 last phrase, update as follows: **"Particularly in respect of children, fairness"** is about (...).
8. At the end of para 3, insert: ***"(...) These challenges are further compounded by discrimination—whether direct or indirect, intentional or not, and often intersectional in nature. Discrimination may also be directed not only at children themselves, but at their family, ethnic or racial group, caste, or other aspects of their identity or background—further reducing their ability and willingness to access justice."***

## SECTION II.

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<sup>1</sup> ICC OTP Policy on Children (December 2023). Available at <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-children-en-web.pdf>

9. At the end of para 7, insert: ***“The right to access to justice is multidimensional. It encompasses justiciability, availability, accessibility, good quality, the provision of remedies for victims and the accountability of justice systems.”***
10. The present General Comment should be read in conjunction with other general comments of the Committee, in particular general comment No. 24 (2019) on children’s rights in the child justice system, which remains the main guidance on the rights of children alleged as, accused of or recognized as having infringed criminal law. Include at the end of the paragraph 8: ***“Furthermore, the General Comment No. 12 (2009) on the right of the child to be heard and the General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration.”*** Generally, insert more references to the Committee’s work.
11. Include the four fundamental principles underpinning the Convention as a whole by inserting at the end of the para 8: ***“A2JER are essential for realizing the four general principles of the Convention, namely, non-discrimination, the child’s best interests, the right to life and development, and the right to be heard.”***
12. Include a definition of access to justice, e.g., by introducing a new paragraph 8a. ***“The right to access to justice for children is essential to the realization of all the rights protected under the Convention. It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women in the judiciary and other law implementation mechanisms. The right to access to justice is multidimensional. It encompasses justiciability, availability, accessibility, good quality, the provision of remedies for victims and the accountability of justice systems.”***

### SECTION III.

13. At the end of para 9, insert the following: ***“A child’s right to access to justice must be addressed through a child-specific, child-sensitive and intersectional lens, reflecting their unique vulnerabilities and evolving capacities. This approach ensures legal processes are not only accessible but also truly responsive to children’s needs.”***<sup>2</sup>
14. Add in para 9, after (...) (b) cessation (...) of the violation, ***“While recognising the need for child-specific and child-sensitive approaches, it is important to situate children’s A2JER firmly within the international human rights law framework, as part of the universal right to justiciability and legal protection.”*** Access to justice is a primary (...)
15. The State’s role includes the monitoring and oversight of non-judicial mechanisms to ensure that they abide by child rights standards. Include at the end of para 11: ***“However, some rights violations require judicial redress, and even when non-judicial avenues are used, judicial recourse must remain available. All rights must ultimately be justiciable.”***

### SECTION III.

16. Include the following text in para 15 (a) Non-discrimination: In line with article 2 of the Convention, all children within the State’s jurisdiction have the right to A2JER without discrimination, ***“including multiple and intersecting forms of discrimination. Prohibited grounds***

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<sup>2</sup> Ibid.

of discrimination include: age; sex; sex characteristics; gender; sexual orientation; gender identity; gender expression; race; colour; national or social origin; nationality/citizenship; ethnicity; disability; immigration status; property; birth or descent, including on the basis of caste and analogous systems of inherited status; language; religion or belief; political or other opinion; membership of a particular social group; marital or family status; pregnancy; childbirth; parenthood; health status, including HIV status or drug dependence; economic and social status; occupational status; place of residence; indigenous identity or status; minority or other status.”

17. In the same paragraph, include the following: (...) All children should be treated with impartiality. ***“Children below the age of criminal responsibility should be ensured the same fair and just treatment as children at or above the minimum age of criminal responsibility.”<sup>3</sup> Social workers, probation officers and other responsible professionals must be aware of and prevent discrimination and stereotyping throughout the proceedings and their outcomes.”<sup>4</sup>*** Specific measures (...).

18. In para 15(f) consider editing as follows: Due process and respect for the rule of law: (...) including when these mechanisms are not structurally independent from the entities over which they have jurisdiction. ***“~~In accordance with international child justice standards,~~ no child under the age of 18 shall be held criminally liable for conduct that would not constitute a criminal offence if committed by an adult.”<sup>5</sup>*** (...)

19. The ICJ suggests inserting **“require”** instead of “do not preclude” in para 15(f). Due process guarantees, and in particular, in the context of the child’s right to A2JER, including in the context of the child’s right to a fair trial, require such adjustments, as opposed to not precluding them.

## SECTION V.

20. Divide this section into two sub-sections—V.1 Access to Justice and V.2 Access to an Effective Remedy—to reflect the conceptual and legal distinctions between these two notions and to improve the text’s clarity and coherence.

21. In para 16 it is recommended to add ***“justiciability, good quality, the provision of remedies for victims, accountability of justice systems”*** after “accessibility” under point (b), consistent with other Treaty bodies General Recommendations.

22. In para 18(a)(ii), after the first sentence, add the following: (...) and domestic law. ***“The most favourable guarantees for the exercise and enjoyment of human rights, including under domestic law must be applied.”***

23. In the para on “Territorial jurisdiction 18(a)(iv)”, in the last sentence, change “may” to “should” or “must” – as this should be a requirement on States. Further, the list is not complete. Thus, ICJ suggests the following: “States should recognize universal jurisdiction for the gravest child rights

<sup>3</sup> ICJ, 2021, Recommendations on the Main Principles Governing the Individual Assessment of Children in Conflict with the Law, <https://icj2.wpenginpowered.com/wp-content/uploads/2021/12/ENGL-Recommendations-Individual-assessment.pdf>, p. 19.

<sup>4</sup> *Ibid*, p. 45.

<sup>5</sup> ICJ, 2023, The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty, [https://www.icj.org/wp-content/uploads/2023/03/Principles-Report\\_English.pdf](https://www.icj.org/wp-content/uploads/2023/03/Principles-Report_English.pdf), principle 11.

violations, such as war crimes, crimes against humanity and genocide, **as well as torture, enforced disappearances, extrajudicial killings, slavery and the slave trade.**"

24. In para 18(a)(v) on Time, for more clarity on statutes of limitations, after the last sentence, add:  
**"When the crimes in question amount to crimes under international law, such as war crimes, crimes against humanity and genocide, statutes of limitations are prohibited. Statutes of limitations do not apply to the prosecution and sentencing of any crimes under international law—including standalone acts of torture, enforced disappearances, extrajudicial killings, arbitrary detention, slavery and sexual violence—nor to enforcement of sentences and victims' access to all remedies and reparations."**
25. In para 18(d), at the end, include: **"The existence of a remedy against unlawful deprivation of liberty or the right to recognition as a person before the law, among others, are non-derogable rights."**
26. In para 19, include after (...) available **"and accessible"** to children.
27. At the end of para 22, include: **"These mechanisms must be child rights compliant, available, accessible of good quality and provide for effective remedies."**
28. As for the issue tackled in para 23, the ICJ would like to bring your attention to its "Traditional and Customary Justice Systems: Report of the 2017 Geneva Forum of Judges and Lawyers."<sup>6</sup> Also, at the end of para 23, add: **"In cases of serious human rights violations, the judicial ones should take precedence."**
29. In para 28, after (...) pregnancy, include: **"and in cases of on-line gender-based violence and discrimination."** Further in the same para 28, insert: (...) rights. **"Female lawyers should be available to represent girls, if so requested or if the case or subject matter is of a nature to make such representation important."**<sup>7</sup>
30. At the end of para 29, add: **"Unaccompanied or separated children should have a guardian appointed as soon as possible. Guardianship complements but does not replace legal representation. To ensure procedural independence, guardians should be part of the child protection system and not report to the same authority handling the child's asylum or immigration case."**<sup>8</sup>
31. In para 38, add: (...) services. **"Information about the rights of children and remedies should be made available to parents and other persons acting as legal representatives of children."**<sup>9</sup> Any interaction (...).
32. In para 37, add: **"The professionals should always inform the child of their roles, professional boundaries and the possible consequences of their actions."**<sup>10</sup>

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<sup>6</sup> See:

<https://www.icj.org/wp-content/uploads/2018/03/Universal-Trad-Custom-Justice-Gva-Forum-Publications-Thematic-reports-2018-ENG.pdf>

<sup>7</sup> ICJ, 2021, Access to Justice for Migrant Children: Training Materials on Access to Justice for Migrants, <https://icj2.wpenginpowered.com/wp-content/uploads/2021/09/Module-5-Access-to-Justice-for-Migrant-Children-1.pdf>, p. 36.

<sup>8</sup> *Ibid*, p. 32.

<sup>9</sup> *Ibid*, p. 41.

<sup>10</sup> ICJ, 2022, Appropriate Procedures to Guarantee Access to Effective Remedies for Migrant Children in Detention and when Subject to Alternatives to Detention, [https://www.icj.org/wp-content/uploads/2022/04/ENGL-CADRE\\_Module-III.pdf](https://www.icj.org/wp-content/uploads/2022/04/ENGL-CADRE_Module-III.pdf), p. 11-12.

33. In para 38, insert: (...) sign language. ***“From the earliest moment of contact with the justice system, children have the right to a free interpreter for communication with the authorities, and with their lawyer.”***<sup>11</sup> Cultural mediators (...) Indigenous groups. ***“Interpreters should be chosen with consideration for the child’s individual background. In sensitive cases—such as when the child belongs to a persecuted minority or is a victim of sexual abuse—the interpreter’s ethnicity or gender should align with the child’s preferences to ensure comfort and trust.”***<sup>12</sup> However, (...)
34. In para 40, insert: (...) interact with children. ***“Where children are not, for any reason, in a position to address the authorities directly, professionals should have a heightened responsibility to understand their needs, vulnerabilities and individual circumstances.”***<sup>13</sup> Children’s lawyers should be appropriately trained and competent to interact with children. In cases of migrant, refugee and asylum-seeking children, it is in the child’s best interest to have a lawyer familiar with the area of law relating to asylum and migration.”<sup>14</sup>
35. In para 42, after the first sentence, include: ***“The term “Remedial mechanisms” includes the court system as a whole.”*** This is critical to ensuring A2JER.
36. Include a new para after para 43: ***“43a. To build basic trust and begin identifying the child’s needs and vulnerabilities, guardians should be provided with an opportunity to meet and consult with the child in conditions conducive to building trust prior to any official hearing by an authority or court. This initial contact can play a critical role in preparing the child emotionally and ensuring that their views are expressed meaningfully and in a rights-based manner.”***<sup>15</sup>
37. In para 45, add: (...) process. ***“Interpreters must never guide or influence children in expressing their views. Due to the power imbalance, children may feel unable to object, which risks distorting or silencing their true perspective.”***<sup>16</sup> Due weight (...).
38. In para 66, insert ***“commensurate to the gravity of the violation”***, instead of, “proportional to the violation”, “an overly lenient sanction”, instead of “with leniency.” And after this sentence, insert: ***“Such circumstances may give rise to impunity.”***

## SECTION VI.

39. In para 84, last sentence, add: (...) Child impact assessments, evaluations ***“and research”*** should inform ***“and provoke”*** any systemic reform (...).

<sup>11</sup> ICJ, 2021, Recommendations on the Main Principles Governing the Individual Assessment of Children in Conflict with the Law, <https://icj2.wpenginpowered.com/wp-content/uploads/2021/12/ENGL-Recommendations-Individual-assessment.pdf>, p. 44.

<sup>12</sup> ICJ, 2022, Appropriate Procedures to Guarantee Access to Effective Remedies for Migrant Children in Detention and when Subject to Alternatives to Detention, [https://www.icj.org/wp-content/uploads/2022/04/ENGL-CADRE\\_Module-III.pdf](https://www.icj.org/wp-content/uploads/2022/04/ENGL-CADRE_Module-III.pdf), p. 19.

<sup>13</sup> Ibid, p. 10.

<sup>14</sup> Ibid, p. 15.

<sup>15</sup> Ibid, p. 14.

<sup>16</sup> Ibid, p. 19.