Dr Angeliki Papantoniou

Queen Mary University London

LL.M. Climate Change Law Course Convenor

Angeliki.papantoniou@qmul.ac.uk

**Comment on the UN Committee on the Rights of the Child: *DRAFT GENERAL COMMENT No. 26,******on children’s rights and the environment with a special focus on climate change***

Thank you for the opportunity to give my input on the first draft of General Comment 26. [[1]](#footnote-1)

**Outline of recommendations**

1.Trafficking

2.Poverty

3.Overlapping Factors

4.Children as members of the public, or public concerned

5.Justiciable substantive right to a healthy environment in international law

6. A due diligence standard

**RECOMMENDATIONS**

1. **Trafficking as indirect consequence of climate change**

**In introduction, in §1 after “sustain all life”**

***Proposed text***

*In addition, the indirect effects of climate change include loss of livelihood of the child’s family, which can result in the child becoming a refugee or victim of trafficking.* [[2]](#footnote-2)

**2.Poverty: I suggest that there is a separate section on poverty and environmental inequalities, after the introduction, setting the scene for §§41,46,50, 105**

***Proposed text***

*Probably the most important aggravating factor linked to environmental degradation affecting children’s health is poverty*. [[3]](#footnote-3)The socio-economic conditions of children’s lives are linked directly to their living environments, and violate the principle of non-discrimination, under Article 2 of the Convention and a number of rights, such as, the right to survival and development (Article 6) and the right to the highest attainable standard of health (Article 24).

*According to who, there is ample evidence to show that children living in poorer circumstances experience poorer health and that poverty is linked to environmental conditions, which negatively affects their health.[[4]](#footnote-4) The chances of living in poverty are heavily against some social groups, such as the unemployed homeless people and their children (at the highest risk), refugees, ethnic minority groups, guest workers and the disabled.[[5]](#footnote-5) Linked to this, environmental risks which threaten children’s health are unequally distributed.[[6]](#footnote-6) [[7]](#footnote-7)*

*Disparities occur not only within countries or between countries but also within the same city, where the urban poor population often face risks much different to the wealthier population.[[8]](#footnote-8) Environmental risks are concentrated among the poorest establishments, in areas where housing is inadequate, water and sanitation are lacking, there is no rubbish collection and smoke contaminates indoor air.[[9]](#footnote-9)*

 *Moreover, millions of children are employed in potentially hazardous sectors including agriculture, mining and tanning.[[10]](#footnote-10)*

*In addition, environmental degradation can worsen socio- economic conditions, a fact that becomes more apparent in relation to climate change. According to the former UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, climate change will exacerbate existing poverty and inequality, with the most severe impact felt by poor regions. It is estimated that developing countries will bear approximately 75–80 % of the costs of climate change,[[11]](#footnote-11) with poverty, relative deprivation, and social exclusion having a profound effect on health and premature death. Children in poverty are more likely to live in sub-standard housing with limited or no access to clean electricity, sanitation, safe drinking water, clean cooking and heating methods and fewer social safety nets to mitigate the effects.[[12]](#footnote-12) Consequently climate change threatens to undo the last fifty years of progress in development, and global health.[[13]](#footnote-13)[[14]](#footnote-14)*

*The link between poverty and environmental threats are also present in high-income countries where the neighbourhoods, which are socially and economically disadvantaged, are located near hazardous waste sites or polluting industries. The effects of the link between social and economic conditions increase the risk of both infectious and chronic diseases. For example, poor water and sanitation have a direct impact on high transmission rate of gastrointestinal diseases and air pollution can cause chronic diseases such as respiratory diseases. For instance, socio-economic inequalities in the living environment are major contributing factors to health inequalities, among children in Europe. Studies have demonstrated that it is a common pattern that children living in poverty have been confronted with multiple environmental risks, because of widespread environmental inequalities. According to the World Health Organization, there is a clear inverse association between the socioeconomic status of a community and the extent to which its residents, including children, will be exposed to toxicities or hazards such as wastes, air pollutants, poor water quality, excessive noise, residential crowding, and poor housing quality.[[15]](#footnote-15)[[16]](#footnote-16)*

*Finally, the COVID-19 pandemic has dramatically altered the health and well-being of children, because of isolation indoors and because of social distancing measures, which exposed them to threats, such as dust and indoor air pollution. Importantly, many of those environmental threats affect children in racial or ethnic minorities with low socio-economic status.*

*Tackling socioeconomic inequality and promoting environmental justice are crucial to reducing environmental risks for children globally.*

**3.Overlapping factors**

**In introduction, possibly after §4**

***Proposed text***

*Children are often exposed to a combination of different environmental threats. [E]nvironmental hazards can trigger, reinforce, and magnify each other. For example, high levels of air pollution combined with drought and lack of precipitation can worsen air quality and can affect immune systems and increasing propensity to future disease.[[17]](#footnote-17) Moreover, flooding in areas of high exposure to lead toxicity can cause lead pollution in the ground or contaminated sites to leach into waterways and find its way to children and pesticide use can reduce capacity for resilience and increase potential for water scarcity, air pollution and disease vectors.[[18]](#footnote-18)[[19]](#footnote-19)*

*In addition, cumulative shocks can exacerbate socio-economic inequalities. Children who already face economic disadvantage are further impacted by climatic events. When families are hit by multiple shocks consecutively, their coping mechanisms and access to resources can be restricted, with the complexity of the situation often rendering the situation* *more dangerous. This complexity ‘can strain the foundations of cultural traditions and lifestyles’.[[20]](#footnote-20) [[21]](#footnote-21)*

**4.Participation- children are members of ‘the public’ or ‘public concerned’ under the two international treaties on procedural environmental rights and domestic legislation.**

**In Section I**

*Proposed wording*

The Committee requests the express inclusion of children as members of the public or public concerned under the Escazu Agreement and Aarhus Convention. Moreover, all states and international organisations must recognise children as members of the public concerned or public, in public participation procedures(second pillar of environmental rights) , according to their evolving capacities. Children’s participation can be provided in the form of “Guidelines of Implementation”[[22]](#footnote-22). As a guideline, the Committee proposes that the age for public participation is defined by the age of criminal responsibility. The global active participation of children in all environmental matters, including climate change negotiations and environmental defenders, proves that children are capable of holding and expressing their views and creating change, even at a young age. For this reason, any debate about the appropriate age should not hinder the active participation of children in environmental matters.[[23]](#footnote-23)

**5. Justiciable substantive environmental right in international law**

**Under II- Key Concepts, possibly after D “Precautionary Principle”**

***Proposed text***

 *While the recognition of right to a healthy environment by the General Assembly is an event of historic dimensions, it is important that such right is justiciable for children*[[24]](#footnote-24), with specific available remedies. The Inter-American Court of Human Rights approach, *linking an autonomous right to a healthy environment under the American Convention to a justiciable right* is helpful*.* [[25]](#footnote-25)

Connecting the right to a healthy environment in international law to justiciable children’s rights obligations would be an immense development. [[26]](#footnote-26)Going a step further, connecting the right to environmental law principles, especially the ones with customary international law status, would provide for specific obligations of states and be binding to all. [[27]](#footnote-27)The Committee urges states to request the International Court of Justice and regional Human Rights Courts and Judicial Bodies, to offer Advisory Opinions on how the right links with obligations under the Convention.

**6.Due diligence Standard**

**In Key Concepts II, possibly after C “The best available science”**

***Proposed text***

Positive environmental obligations arise in relation to children’s rights, especially the right to survival and development.[[28]](#footnote-28)Establishing a clear due diligence standard in environmental matters under the UNCRC, which stems from international environmental law obligations, is an important step for the realisation of children’s protection[[29]](#footnote-29). It can no longer be disputed that ,for the protection of children’s rights in international law, a due diligence standard(a standard of conduct or behaviour)to observe international environmental law standards applies. The Committee urges states to take all necessary measures to protect and preserve the environment, according to their due diligence obligations under international environmental law (treaty law and customary international law).

More specifically, states, in exercising their due diligence obligation, must observe the environmental law principles of precaution,prevention and cooperation, in their full dimensions under international law. This includes the extra-territorial effects of pollution and environmental degradation, including climate change[[30]](#footnote-30) and the regulation of business activities with harmful environmental effects.[[31]](#footnote-31)

*Thank you for your attention. I hope that you find some of this useful. I am at your disposal for any further information.*

*Sincerely,*

*Dr Angeliki Papantoniou*

1. All of the recommendations are included in my book : *Children and the Environment, Pathways to Legal Protection* Brill 2022. The text in italics cites directly the text of the book. [↑](#footnote-ref-1)
2. Papantoniou *Children and the Environment* 7. For trafficking due to climate induced environmental disasters see Dutta, P.M. ‘Natural disaster and vulnerability to trafficking of women and girls in India.’ Eur Sci J 7881 (2017): 54– 69, 54– 55. For climate change and human trafficking more broadly see J.C. Sheu et al. ‘Potential impact of climate change on human trafficking: A

narrative review’The Journal of Nervous and Mental Disease 209.5 (2021): 324– 329. [↑](#footnote-ref-2)
3. Papantoniou Children and the Environment 8 [↑](#footnote-ref-3)
4. World Health Organization *Inheriting a Sustainable World? Atlas on children’s health and the environment’*,(WHO Atlas) Geneva 2017, available at, <https://www.who.int/ceh/publications/inheriting-a-sustainable-world/en> 6. [↑](#footnote-ref-4)
5. Ibid 6–7. [↑](#footnote-ref-5)
6. Ibid 7. [↑](#footnote-ref-6)
7. Papantoniou *Children and the environment* 8 [↑](#footnote-ref-7)
8. WHO Atlas 7 [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. UN Special Rapporteur on Human Rights and the Environment *The right to a clean, healthy and sustainable environment: non-toxic environment Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,* 12 January 2022, a/hrc/49/53 §21. [↑](#footnote-ref-10)
11. UN Special Rapporteur on Extreme Poverty and Human Rights, *Climate change and poverty*, 25 June 2019, a/hrc/41/39 §11. [↑](#footnote-ref-11)
12. Ibid §12. [↑](#footnote-ref-12)
13. Ibid §13. [↑](#footnote-ref-13)
14. Papantoniou *Children and the Environment* 9 [↑](#footnote-ref-14)
15. *‘Socio-environmentally determined health inequalities among children and adolescents’,* 2010 4 and *‘Environment and Health Risks: A review of the influence and effects of social inequalities’*,2010 160–161. [↑](#footnote-ref-15)
16. Papantoniou *Children and the Environment* 10 [↑](#footnote-ref-16)
17. unicef *Children’s Climate Risk Index 2021*  54. [↑](#footnote-ref-17)
18. Ibid. [↑](#footnote-ref-18)
19. Papantoniou *Children and the Environment* 10 [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Ibid. [↑](#footnote-ref-21)
22. See for example The Aarhus Convention: An Implementation Guide (second edition), https:// unece.org/ envi ronm ent- pol icy/ publi cati ons/ aar hus- con vent ion- imp leme ntat ion- guide- sec ond- edit ion. [↑](#footnote-ref-22)
23. . An example of children’s participation is the Italian initiative ‘La città dei

bambini – The Children’s City’. The project affirmed the role of children in

urban administrations and the overall sustainability of cities. The project

aimed at creating active citizens, capable of taking initiative in successful

urban development and involved the participation of children and teenagers.

Two different actions took place in two different cities in the form of workshops.

The one was ‘Participative Planning’ and the other ‘To School we go by

ourselves’. Children offered tangible suggestions in relation to children’s space

and home- school routes, which resulted in concrete results, namely an awakening

of the interest of local authorities in relation to children’s problems in the

urban environment and an increase of children going to school by themselves. All in

Papantoniou *Children and the Environment* 94 [↑](#footnote-ref-23)
24. Papantoniou *Children and the Environment* 80 [↑](#footnote-ref-24)
25. Article 26 of the American Convention, providing for the progressive realisation of economic and social rights Ibid [↑](#footnote-ref-25)
26. Papantoniou *Children and the Environment* 88 [↑](#footnote-ref-26)
27. Ibid [↑](#footnote-ref-27)
28. Following the approach adopted in the Advisory Opinion on The Environment And Human Rights (State Obligations In Relation To The Environment In The Context Of The Protection And Guarantee Of The Rights To Life And To Personal Integrity— Interpretation And Scope Of.

Articles 4(1) And 5(1) Of the American Convention On Human Rights). Oc 23/ 17.

At http:// www.corte idh.or.cr/ docs/ opinio nes/ seriea 23\_ esp.pdf (Spanish only).

Inter- American Court of Human Rights, November 15, 2017. [↑](#footnote-ref-28)
29. See Papantoniou *Children and the Environment* 83-85 and 111 [↑](#footnote-ref-29)
30. See *Saatchi et al v Argentina et al* , UNCRC Committee, Communications Nos.104-108 /2019 [↑](#footnote-ref-30)
31. See EU proposed Directive on Due Diligence <https://data.consilium.europa.eu/doc/document/ST-15024-2022-REV-1/en/pdf> [↑](#footnote-ref-31)