



Submission to the UN Committee on the Rights of the Child

Draft General Comment No 26 (202x) Children's Rights and the Environment with a Special Focus on Climate Change

Professor Michelle Foster*
Professor H el ene Lambert 
Scientia Professor Jane McAdam AO 
Anna Talbot*

13 February 2023

Thank you for the opportunity to provide a submission concerning Draft General Comment No 26. We are scholars with longstanding experience in the fields of international refugee and human rights law, with a particular focus on mobility in the context of climate change and disasters.

In this submission, we recommend that the Draft General Comment include specific language about the protection of children who are displaced (or at risk of displacement) or stateless (or at risk of becoming stateless) in the context of climate change, disasters or environmental degradation. In making our recommendations, we draw and build upon a range of international declarations, guidelines, other instruments and jurisprudence acknowledging States' human rights and other obligations in this context,¹ as well as a plethora of academic publications and

* Professor and Director, Peter McMullin Centre on Statelessness, Melbourne Law School, University of Melbourne; m.foster@unimelb.edu.au.

  Professor of Law, Faculty of Law, University of Technology Sydney; helene.lambert@uts.edu.au.

  Scientia Professor of Law and Director, Kaldor Centre for International Refugee Law, UNSW Sydney; j.mcadam@unsw.edu.au. Professor McAdam was Co-Rapporteur of the International Law Association (ILA) Committee on Sea Level Rise which drafted [Resolution 6/2018 and accompanying Sydney Declaration of Principles on the Protection of Persons Displaced in the context of Sea Level Rise](#) (2018).

* PhD candidate, Kaldor Centre for International Refugee Law, UNSW Sydney; anna.talbot@unsw.edu.au.

¹ See eg [Guiding Principles on Internal Displacement](#), E/CN.4/1998/53/Add.2 (11 February 1998); UNFCCC, Decision 1/CP.16, [The Canc un Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention](#), FCCC/CP/2010/7/Add.1 (10–11 December 2010) para 14(f); [Sendai Framework for Disaster Risk Reduction 2015–2030](#), UNGA res 69/283 (23 June 2015); [Transforming Our World: The 2030 Agenda for Sustainable Development](#),

expert reports.²

Specifically, this submission:

- proposes the inclusion of a new paragraph highlighting States' obligations to ensure that displaced children have access to asylum procedures, including a child-sensitive assessment of protection needs;
- proposes two new paragraphs highlighting States' *non-refoulement* obligations in the context of climate change, disasters and environmental degradation, as well as their obligations to provide solutions;
- proposes changes to paragraphs 8, 25, 26, 29, 30, 31, 37, 42, 43, 44, 46, 48, 49, 50, 51, 56, 81, 98, 106, 107 and 108 concerning the rights and protection of displaced and/or stateless children.

The purpose of these recommendations is to ensure that children and their families can: (a) remain safely at home when possible; (b) migrate (or relocate) in a safe and dignified manner; and (c) receive protection and assistance if they are displaced, whether internally or across an international border. The addition of specific references to stateless children is essential to ensure that no one is 'left behind'.³

New paragraph on access to asylum procedures

We propose the inclusion of the following new paragraph, immediately after paragraph 64.

(Sustainable Development Goals) UNGA res 70/1 (25 September 2015); UNFCCC, [Decision 1/CP.21, Adoption of the Paris Agreement](#) in *Report of the Conference of the Parties on its Twenty-First Session, held in Paris from 30 November to 13 December 2015*, FCCC/CP/2015/10/Add.1 (29 January 2016); [Global Compact for Safe, Orderly and Regular Migration](#), A/RES/73/195 (19 December 2018) Objective 21, paras 11, 37; [Global Compact on Refugees](#), A/73/12 (Part II) (2018) paras 8, 12, 63; Nansen Initiative on Disaster-Induced Cross-Border Displacement, [Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change](#) (2015); Brookings, Georgetown University and UNHCR, [Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation](#) (7 October 2015); Georgetown University, UNHCR and IOM, [A Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change](#) (2017); International Law Association, [Resolution 6/2018 and accompanying Sydney Declaration of Principles on the Protection of Persons Displaced in the context of Sea Level Rise](#) (2018); UNICEF et al, [Guiding Principles for Children on the Move in the context of Climate Change](#) (2022); [Protection for Persons Moving across Borders in the context of Disasters: A Guide to Effective Practices for RCM Member Countries](#) (2016); South American Conference on Migration, [Regional Guidelines on the Protection and Assistance of Cross-Border Displaced Persons and Migrants in Countries affected by Disasters](#) (2018); [Protocol on the Protection and Assistance to Internally Displaced Persons \(International Conference on the Great Lakes Region\)](#) (30 November 2006) arts 1, 3(2), 3(5), 6(4)(c); [African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa](#) (Kampala Convention) (adopted 22 October 2009, entered into force 6 December 2012) 49 ILM 86, art 1(k); [Protocol on Free Movement of Persons in the IGAD Region](#) (26 February 2020); [Kampala Ministerial Declaration on Migration, Environment and Climate Change](#) (29 July 2022); Republic of Fiji, [Planned Relocation Guidelines: A Framework to Undertake Climate Change Related Relocation](#) (2018); Government of Vanuatu, [National Policy on Climate Change and Disaster-Induced Displacement](#) (2018); Republic of Fiji, [Displacement Guidelines in the context of Climate Change and Disasters](#) (2019).

² See eg Internal Displacement Monitoring Centre (IDMC), [GRID 2019: Global Report on Internal Displacement](#) (IDMC 2019); resources available on the [website](#) of the Platform on Disaster Displacement; The White House, [Report on the Impact of Climate Change on Migration](#) (October 2021); special issue of the *Forced Migration Review* (2022) on 'Climate Crisis and Displacement: From Commitment to Action'.

³ UN Secretary General, [Our Common Agenda: Report of the Secretary General](#) (2021) 6.

Draft paragraph

States must ensure that displaced children have timely access to asylum procedures, regardless of the child's age, nationality or legal status. Such procedures must comply with the safeguards and support measures, set out in General Comment 6, including the requirement for a child-sensitive assessment of protection needs.

Commentary

Children often 'experience displacement in a different way from the rest of their communities'.⁴ Displaced children must have timely access to a child-sensitive procedure that can determine their particular protection needs and facilitate their meaningful participation.⁵ A child-centred approach is essential to meeting the needs of all children in asylum determination procedures, reception and admission, access to all essential services and providing meaningful and sustainable solutions.⁶

New paragraphs on States' international protection obligations

We propose the inclusion of two new paragraphs emphasizing States' international protection obligations under international refugee law and international human rights law. We suggest that they could be placed immediately after paragraph 101 (concerning States' obligations generally).

Draft paragraphs

In particular, States have duties to prevent displacement and to protect and assist children and their families who are displaced, whether internally or across an international border. States must respect the principle of *non-refoulement* by refraining from removing any child who faces a real risk of persecution or other irreparable harm in the context of climate change, disasters or environmental degradation,⁷ such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention.⁸ Such *non-refoulement* obligations apply irrespective of whether serious violations of those rights originate from non-State actors, or whether such violations are directly intended or are the indirect consequence of action or inaction.⁹ The assessment of the risk of such violations should be conducted in an age-sensitive manner and in line with the principle of precaution.¹⁰

In addition to providing emergency humanitarian protection, such as in the aftermath of a disaster, States should provide durable and sustainable solutions where return is not possible. They should build on existing responses to assist people displaced in the context of disasters and other precarious situations, 'such as by providing humanitarian

⁴ Initiative for Child Rights in the Global Compacts, [A Practical Guide: Protecting and Supporting Children Through the Global Compact on Refugees](#) (2021) 1.

⁵ See eg [Convention on the Rights of the Child](#) (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 9(2); Global Compact on Refugees (n 1) paras 13, 51, 75, 76, 77, 106; Global Compact for Migration (n 1) para 15(h).

⁶ UNHCR, [Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child](#) (2021) 33, 58–59; [Guidelines for the Alternative Care of Children](#), A/RES/64/142 (2010).

⁷ [Teitiota v New Zealand](#), CCPR/C/127/D/2728/2016 (2019) para 9.11.

⁸ Committee on the Rights of the Child, '[General Comment No 6 \(2005\): Treatment of Unaccompanied and Separated Children Outside their Country of Origin](#)', CRC/GC/2005/6 (1 September 2005).

⁹ Committee on the Rights of the Child and Committee on Migrant Workers, '[Joint General Comment No. 3 of the CMW and No. 22 of the CRC in the context of International Migration: General Principles](#)' (2017), CMW/C/GC/3-CRC/C/GC/22 (16 November 2017) para 46.

¹⁰ Committee on the Rights of the Child, [WMC v Denmark](#), CRC/C/85/D/31/2017 (2020) para 8.3.

visas, private sponsorships, access to education [and healthcare] for children, and temporary work permits, while adaptation in or return to their country of origin is not possible'.¹¹ Displaced children may be at risk of statelessness because of issues relating to entitlement to or proof of nationality. States must respect the right of displaced children to preserve their identity, including nationality, and/or facilitate their naturalization.

Commentary

The principle of *non-refoulement* in international refugee law¹² and international human rights law¹³ precludes States from removing people to situations where they face a real risk of persecution or other serious harm, such as being arbitrarily deprived of life or subjected to cruel, inhuman or degrading treatment. These rights are enmeshed with other rights, such as the right to an adequate standard of living and the right not to be deprived of a means of subsistence. For instance, article 6(2) of the Convention on the Rights of the Child links the right to life to the State's duty 'to ensure to the maximum extent possible the survival and development of the child',¹⁴ while the Committee on the Rights of the Child instructs that the right to life must be implemented holistically, 'through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, social security, an adequate standard of living, [and] a healthy and safe environment'.¹⁵

In order to benefit from the protection of *non-refoulement*, it is necessary only to show that a person has a 'well-founded fear' of being persecuted (refugee law) or faces a real risk of being subjected to irreparable harm (human rights law) in the reasonably foreseeable future. There is no requirement that harm must be 'imminent'.¹⁶ The Human Rights Committee has recognized that *non-refoulement* obligations can arise as a result of 'the effects of climate change in receiving states', including additional risks faced by children in this context.¹⁷

It is also instructive to note that the 2018 *Global Compact for Safe, Orderly and Regular Migration* re-commits States to ensuring that they do not return migrants to situations of irreparable harm,¹⁸ and to build on existing responses to assist people displaced in the context of disasters and other precarious situations, 'such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits, while adaptation

¹¹ Global Compact for Migration (n 1) Objective 5, para 21(g).

¹² See eg UNHCR, '[Legal Considerations regarding Claims for International Protection Made in the context of the Adverse Effects of Climate Change and Disasters](#)' (1 October 2020); Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (Cambridge University Press 2020); Jane McAdam, '[Moving beyond Refugee Law: Putting Principles on Climate Mobility into Practice](#)' (Keynote Address, Refugee Law Initiative Conference, June 2022).

¹³ See eg Jane McAdam, 'Displacement in the context of Climate Change and Disasters' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021); *Teitiota* (n 7); Jane McAdam, '[Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement](#)' (2020) 114 *American Journal of International Law* 708.

¹⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 6(2).

¹⁵ Committee on the Rights of the Child, '[General Comment No 7 \(2005\): Implementing Child Rights in Early Childhood](#)', CRC/C/GC/7/Rev.1 (20 September 2006).

¹⁶ Adrienne Anderson, Michelle Foster, Hélène Lambert and Jane McAdam, '[Imminence in Refugee and Human Rights Law: A Misplaced Notion for International Protection](#)' (2019) 68 *International and Comparative Law Quarterly* 111, 120; Adrienne Anderson, Michelle Foster, Hélène Lambert and Jane McAdam, '[A Well-Founded Fear of Being Persecuted ... But When?](#)' (2020) 42 *Sydney Law Review* 155; Michelle Foster and Jane McAdam, '[Analysis of "Imminence" in International Protection Claims: *Teitiota v New Zealand* and Beyond](#)' (2022) 71 *ICLQ* 975.

¹⁷ *Teitiota* (n 7) para 9.11.

¹⁸ Global Compact for Migration (n 1) Objective 21, para 37; see also para 11.

in or return to their country of origin is not possible'.¹⁹

Other considerations

As indicated above, we also propose minor changes to the following paragraphs. We have used strikethrough to show proposed deletions and italics to show proposed additions. Paragraph numbers refer to the numbers of the Committee's draft General Comment, unaltered to account for our proposed additional paragraphs.

Paragraph 8

Edit second sentence:

... including children with disabilities, Indigenous children, ~~and stateless children~~, children working in hazardous conditions, *and children who are migrants, refugees or otherwise displaced (whether internally or across an international border)* ...

Paragraph 25

Edit first sentence:

Climate change, biodiversity loss, ~~and~~ the degradation of ecosystems *and displacement* create new obstacles ...

Add a final sentence:

Displacement and/or statelessness in the context of climate change, disasters or environmental degradation can both remove children from access to health facilities and give rise to increased risk of injury or illness.

Paragraph 26

Edit final sentence:

... both sudden and slow onset events (*and any associated displacement*), are disproportionately borne ...

Paragraph 29

Edit first sentence:

The right to health includes the access of children affected by environmental harm (*including those at risk of displacement or in fact displaced in this context*) ...

Paragraph 30

Edit first sentence:

Availability of quality data is crucial for adequate protection against environmental

¹⁹ Ibid, Objective 5, para 21(g). See further Bruce Burson, Richard Bedford and Charlotte Bedford, [*In the Same Canoe: Building the Case for a Regional Harmonisation of Approaches to Humanitarian Entry and Stay in 'Our Sea of Islands'*](#) (Platform on Disaster Displacement 2021); David J Cantor, [*'Environment, Mobility and International Law: A New Approach in the Americas'*](#) (2021) 21 *Chicago Journal of International Law* 263.

health risks, *including where children are displaced and/or stateless ...*

Paragraph 31

Add a final sentence:

Displacement in the context of climate change, disasters or environmental degradation can also interrupt education, including by removing children from their place of education and on account of the disruption occasioned by displacement itself.

Paragraph 37

Add a final sentence:

Where children are displaced, States should ensure that response efforts include enabling children to continue their education with as little disruption as possible.

Paragraph 42

Edit final sentence:

Such provisions equally apply to children displaced ~~by climate or environment related harm~~ *in the context of climate change, disasters or environmental degradation and/or who are stateless.*

Paragraph 43

Edit first sentence:

Children should not be subject to forced evictions *or planned relocations* without prior ~~consultation~~ *provision of adequate alternative accommodation, including relocation linked to development and consent, and must be provided with adequate alternative accommodation and resources if moved.* ~~infrastructure projects addressing energy and/or climate action~~ Child rights impact assessments should be a prerequisite for *any such actions.*

Paragraph 44

Edit first sentence:

In situations of cross-border displacement ~~and~~, *migration or relocation* linked to *the adverse impacts of climate change, disasters or environmental degradation and related events...*

Paragraph 46

Edit second sentence:

Children, particularly those *who are displaced and/or* living in poverty ...

Paragraph 48

Edit second sentence:

In situations of climate-related disasters (*and any associated displacement*), active measures should be taken...

Paragraph 49

Add a second sentence, and edit following:

They are also particularly affected by displacement in this context on account of their unique cultural and spiritual connections to traditional lands.²⁰ States parties should closely consider the impact of environmental harm for the significance of traditional lands and the quality of the natural environment while ensuring the right to life, survival and development, and the right to culture of Indigenous children, especially where they are displaced from traditional lands and/or separated from communities. In particular, States should ensure that adaptation measures are implemented to support Indigenous children and their families to remain on their traditional lands where they desire to do so, in full consultation with those communities. This will maximize Indigenous children's ability to continue to learn and practice their cultures as the climate changes. States should also undertake measures to engage with Indigenous children and their families in responding to climate change by integrating, as appropriate, Indigenous cultures and knowledge in mitigation and adaptation measures. This should include recognizing the value of traditional knowledges in preserving culture, and ensuring that people who move or are relocated may continue their cultural practices and preserve their cultural heritage.

Paragraph 50

Edit second sentence:

They include girls, children with disabilities, Indigenous children and children of minority groups, stateless children, ... ~~and refugee, migrant and internally displaced children~~ and children who are migrants, refugees or otherwise displaced (whether internally or across an international border).

Paragraph 51

Add a final sentence:

States should ensure that stateless children are not excluded from critical support services, including disaster relief and emergency healthcare, on the basis of their lack of citizenship or legal status.

Paragraph 56

Edit fifth sentence:

Additional support and special strategies may be required to empower children in disadvantaged situations, such as children with disabilities, children belonging to minority groups, stateless children, children who are migrants, refugees or otherwise displaced (whether internally or across an international border) and children...

²⁰ [Billy et al v Australia](#), CCPR/C/135/D/3624/2019 (2022) para 5.7.

Paragraph 64

Edit second sentence:

Child-sensitive procedures should be available for claims of ~~imminent serious~~ or foreseeable harms...

Paragraph 81

Edit second sentence:

... including risks and actual impacts of climate-related harm on children's rights, *such as when children are at risk of displacement or in fact displaced in the context of climate change, disasters or environmental degradation.*

Paragraph 97

Edit final sentence:

... children and their communities, *including stateless children, and children who are migrants, refugees or otherwise displaced (whether internally or across an international border).*

Paragraph 106

Edit third sentence:

... children with disabilities, *stateless children*, children on the move, *(including children who are migrants, refugees or otherwise displaced (whether internally or across an international border))* ...

Add a final sentence:

For example, stateless children are typically excluded from State surveys and censuses and thus may be left out of climate change adaptation plans, national development plans, national energy strategies and disaster risk reduction plans and policies.²¹

Paragraph 107

Edit first sentence:

... protecting schools, *preventing displacement* and developing sustainable water management systems. Measures that are necessary to protect children's rights to life and health from ~~imminent serious~~ threats, ...

Edit third sentence:

... access to food and water and sanitation, *as well as longer-term plans to ensure that children can continue to live in their homes in safety and with dignity.* Adaptive measures ...

Edit fifth sentence and following:

²¹ UNHCR, '[Statelessness and Climate Change](#)' (Factsheet, 29 October 2021).

Furthermore, adaptation frameworks should address climate-related *displacement, migration and planned relocations*, and include provisions for ensuring a child rights-based approach to ~~migration~~ *migration mobility*. *Migration can be a form of adaptation to climate change, enabling people to move safely and on their own terms. States should review their existing domestic laws and regional arrangements to provide opportunities for movement, ensuring that people's dignity and human rights are safeguarded.*

Paragraph 108

Edit first sentence and add the following:

In the event of ~~imminent~~ *serious* threats of climate-related harm such as extreme weather events, States should ensure that all information that would enable children, their caregivers and communities to take protective measures is disseminated immediately *in languages and formats that are readily understood in those communities*. ... *If evacuations are required, they should be for the shortest time possible, provided for by law, and necessary to protect the life and health of affected persons. They must be carried out with full respect for the life, dignity, liberty, and security of evacuees, with children's best interests a primary consideration. All attempts should be made to ensure that evacuated children are not separated from their families, and if they are separated, to reunite them as soon as possible.*

We remain at the Committee's disposal if further detail or information is required. We are content for this submission to be displayed publicly.