

Draft General comment No. 26 Children's rights and the environment with a special focus on climate change

Joint submission made on behalf of the Child Rights Connect Working Group on child rights and environment

February 2023

Joint submission from Alana Institute, Child Rights Connect, Child Rights International Network (CRIN), CRC Asia, DKA Austria, Environment Africa, Global Action Plan, Franciscans International, Heirs to Our Oceans, Make Mothers Matter, One Ocean Hub, Plan International, Save the Children International (SCI), Soka Gakkai International, World Council of Churches (WCC), World Vision International (WVI).

The Child Rights Connect Working Group (WG) welcomes the opportunity to provide comments to the draft General Comment No. 26 Children's rights and the environment with a special focus on climate change (GC26).

GENERAL COMMENTS ON THE DRAFT

1. The universal human right to a clean, healthy and sustainable environment

We welcome the recognition of the right to a clean, healthy, and sustainable environment within the draft General Comment and the substantial content addressing its application. This recognition represents a significant development, and we urge the Committee to give the content greater prominence by moving the relevant section forwards in the text. The GC26 should stem from the explicit and clear recognition of this right as a new human rights standard recognized by the UN General Assembly in September 2022 (and before, by the Human Rights Council). It is important to clearly state that this right is a **right in and of itself**, not only **the basis for the fulfilment of other rights**. By addressing the issue before the right-by-right analysis that takes place in Section III, the text would appear directly after the key concepts and inform the way that the analysis of specific rights within the Convention is addressed within the draft. In recognizing children's right to a clean environment, it is necessary to explain the importance of this right for children, given their higher vulnerability to environmental degradation and climate change, compromising their very survival. The right to a clean, healthy and sustainable environment is inter-linked to **all children's rights**, not just the ones listed in the document. In addition, the measures described in **section IV paragraph 73** do not cover the large spectrum of measures that States must adopt and implement in order to respect, protect and fulfill the children's right to a clean, healthy and sustainable environment. These measures need to be designed and implemented in conjunction with the vast body of international environmental law as well as the relevant SDGs, ensuring policy coherence and mutual supportiveness. The present GC describes how States can do so (see also suggested Objective of the GC).

2. Sense of urgency

We believe that GC26 must convey the magnitude of the challenges and level of urgency that environmental degradation and climate change poses on children's rights through available published and peer reviewed evidence. For example, according to two new [WHO reports released in 2017](#), every year, 1.7 million children below the age of 5 die from environmental pollution such as indoor and outdoor air pollution, second-hand smoke, unsafe water, lack of sanitation, and

inadequate hygiene. [The Intergovernmental Panel on Climate Change \(IPCC\) also provides evidence](#) of the impact of climate change on children (June 2022), that we think would be critical to mention in GC26: “children aged ten or younger in the year 2020 are projected to experience a **nearly four-fold increase in extreme events under 1.5°C of global warming by 2100**, and a five-fold increase under 3°C warming. Such increases in exposure would not be experienced by a person aged 55 in the year 2020 in their remaining lifetime under any warming scenario.”

We recommend that the level of urgency be addressed consistently throughout the document, referring to outstanding statistics that demonstrate the devastating impact environmental degradation, pollution and climate change have on children and their rights.

We believe that using stronger assertive language throughout the text would strengthen the GC26. For example, phrases like “toxic substances may have an impact”, “there is a risk that...”, “has the potential of...” need to be made stronger and factual in light of the evidence (see below more on data, statistics and evidence).

RECOMMENDATIONS ON THE STRUCTURE:

We recommend the following changes to the structure to respond to the following needs and concerns:

- Move upfront in the text the explicit recognition of **children’s right to a clean, healthy and sustainable environment** in the terms stated above. Integrate **Section IV** in the recommendations on obligations of states as the entire GC is about the right to a clean, healthy and sustainable environment.
- See below specific comments on the structure of **section III**, which we propose to merge with **Section V** and cover children’s rights **in groups of rights** in accordance with how each group relates to environmental degradation and climate change, and, **as much as possible, in accordance with the reporting clusters**. While environmental degradation and climate change affect **all child rights**, some child rights are **directly affected by environmental degradation**, while others are more **directly related to empowering children** through the protection of their civil and political rights. For example, the measure *to establish appropriate waste management systems that are located at considerable distance of schools*, is directly related to protecting **the right to health, food, safety, etc.**
- **Integrate climate change** in sections on rights and obligations and do not treat it separately. Having a separate section raises concerns a) does not reflect the close interlinkages among the **triple planetary crisis** that humanity currently faces: climate change, pollution and biodiversity loss; policies addressing these challenges are interconnected so issues must be considered in a holistic systems approach; and b) having climate change in a separate section might undermine the rest of the GC26, as the content of other sections might be overlooked by those only working on climate change.

Based on these arguments, **we recommend the following structure:**

- I. **Introduction**
- II. **Key concepts**
- III. **The right to a clean, healthy and sustainable environment.**
- IV. **Rights and obligations: we recommend that in this section includes subheadings for a simplified comprehension:**

- *each of the groups of rights could integrate recommendations on how the rights are affected, what are the State obligations related to these rights and the concrete actions the State should take; and*
 - *integrate the relevant recommendations on climate change under each group of rights.*
- A) **General principles and rights:** non-discrimination; the best interests of the child; right to life, survival and development (keeping this right as one, not separating life and survival from development); the right of the child to be heard.
- B) **Children’s rights violated and undermined as a direct result of environmental degradation and climate change:** right to the highest standard of health; right to adequate standard of living; right to play; the rights of indigenous children; the rights of children with disabilities; rights of children on the move right to be protected from all forms of violence; right to be registered after birth and to nationality.
- C) **Children’s civil and political rights and other child rights related to children’s empowerment:** right to freedom of expression, association, and peaceful assembly; access to information; right to education.
- D) **General measures of Implementation (Article 4):** access to justice and remedies; child rights impact assessment; child rights and business; international cooperation.

RECOMMENDATIONS ON THE INTRODUCTION, KEY CONCEPTS AND OBJECTIVES:

- a) **On Terminology:**
- i. Replace the terminology “environmental citizens”, “agents of change” and “child rights defenders” with “**child environmental human rights defenders**“, when referring to children that defend human rights related to the environment, using the [terminology agreed by the Committee and other international human rights experts.](#)
 - ii. Replace ‘environmental harm’ with **environmental degradation and climate change** throughout the document.
 - iii. Replace susceptibility of children by children in **vulnerable situations**.
- b) **Introduction should include:**
- i. That the GC is anchored in the recognition of **the children’s right to a clean, healthy and sustainable environment**, in the terms and context stated above
 - ii. The fact that children are disproportionately affected by environmental degradation and climate change and therefore are particularly **vulnerable** to the impacts including already in utero/during their mother’s pregnancy. Urge States to put children’s rights at the center of decision-making processes on issues of environment and climate change as well as sustainable development.
 - iii. That there is a need for **policy coherence** when looking at the impacts of environmental degradation and climate change on children’s rights. While the CRC Committee does not have in its mandate to enforce international environmental agreements and obligations, nor is it its function to rewrite obligations provided for in international environmental agreements, it is compelled to underline the **actions needed to protect children from environmental degradation**. The implementation of the CRC and the compliance of international and national environmental regulations must be **mutually supportive**. This needs to be made clear and reflected in the obligations and measures of implementation.
 - iv. That children’s participation, many of whom identify themselves as children human/environmental rights defenders, was factored in the process of the GC development and that stakeholders are encouraged to continue such process of hearing

- the views and recommendations of children about the dynamic state of natural environment and the impact of its condition to the realization of children’s rights.
- v. Information on how the views of children and others were taken into account in the drafting of the GC.
 - vi. Clarify that the GC applies to children below 18 for those less familiar with child rights. Reference is made to future generations and intergenerational equity because the respect, protection and fulfilment of children today, have an impact on those who will be born tomorrow. States, when fulfilling their obligation should keep this under consideration.

On the section on “**A child rights-based approach**”, we recommend that the GC26 clarifies that the whole content of the GC26 aims at providing guidance for a child rights approach, thus we suggest integrating the content of the **section Child-rights based approach** into the obligations in the newly proposed section on rights and obligations. On **Section B: “The evolution of international human rights law and the environment”**: the title and content of this section should include reference (not citing) to the **vast body of international, regional and national environmental law**. It should be stated that the GC takes into account and builds on progressive UN legal and policy developments in the area of human rights and the environment (treaties, policy documents including general comments, concluding observations, resolutions and reports from treaty bodies, charter bodies including special rapporteurs). These also include CRC concluding observations and HRC resolution 45/30 which recognizes already children’s rights to a healthy environment and has recommendations of direct relevance to this GC’s content (right to information, participation, health, international cooperation, role of treaty bodies, role of businesses, access to justice, etc.).

- c) **On Objectives: we recommend** that the following objective be **added: to interpret the newly recognized (2022) universal human right to a clean, healthy and sustainable environment in the legal framework of the UNCRC.**
- d) **On Key concepts:**
 - i. Introduce the definition of sustainable development as originally coined in the **1987 Brundtland Report: sustainable development** is "development that meets the **needs of the present generation** without compromising the ability of **future generations** to meet their own needs". This definition makes clearer the intergenerational aspect of development which is then further explain in the following key concept on “Intergenerational equity.” The definition of sustainable development should emphasize that fulfilling children’s rights is a prerequisite^[1] for realizing sustainable development for all.
 - ii. Include the definition of **intergenerational equity**.
 - iii. Also include “**Just Transition**” among key concepts. GC26 should be able to provide guidance to States in responding to children’s questions such as “When many economies and livelihoods depend on fossil fuels, how do we balance economic and environmental priorities?^[2]” GC26 should be able to provide guidance to States on how to operationalize “just transition” that is required by the Paris Agreement and other international instruments that aim to respond to issues of climate change. The term is oftentimes used but also often remains unclear as to how States are to facilitate it while ensuring the informed participation of communities, including children. Supporters and proponents of unsustainable practices, including communities who depend on them, will remain loyal to

unsustainable practices (e.g. resource extractive industries) unless they are assured of benefits from a gradual transition to healthier alternatives in terms of livelihoods or consumer goods. Not addressing this will make it difficult to realize children's rights in the different interventions against the impacts of climate change.

- iv. To include clear and separate presentation of **definition of "mitigation" and "adaptation"** so as to guide States and other stakeholders on how to implement these as child sensitive measures, as these are also prominent recommendations of the Intergovernmental Panel on Climate Change (IPCC).

RECOMMENDATIONS ON RIGHTS AND OBLIGATIONS

As mentioned above, it would be helpful and more relevant if sections on rights and obligations are integrated. The proposal is to do so under groups/cluster of rights to provide concrete and specific guidance to States avoiding duplication.

Recommendations on the proposed section on four general principles

- a) **On the right to be heard:** children's participation, including the role of child human rights defenders, requires space for thorough explanation in GC26. Children's right to participate on issues of environment and climate change should be supported by adults who understand this right. GC26 should be clear that States should involve parents, guardians and other caregivers of children in related discussions so that they can support meaningful child participation and not as proxy for children's participation (e.g. participation in processes related to Free, Prior and Informed Consent, etc.). The discussion on children's right to be heard (Art. 12) should provide guidance to States in making the "free, prior, and informed consent" and other consultative measures in many existing national and international policies child rights, inclusive and responsive.
- a) **On the principle of non-discrimination:** important for the committee to add that there is no climate justice without racial justice, and references to minority groups do not necessarily recognise racial injustice
- b) **The principle of "Best interests of the child":** The principle of the best interest of the child is a core part of a child-rights approach. That is, every decision that States are to make that have an impact on the environment, must go through a child rights impact assessment, by giving primary consideration to the best interest of the child and ensuring that the child's right to a clean, healthy and sustainable environment is respected, protected and fulfilled. This principle should be applied in two dimensions and should be differentiated: assessing best interests in environmental decisions and embedding environmental considerations into best-interests' assessments on other policies, notably economic and social policies. Refer to the 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). Consideration of children's views is the basis for determining the best interests of the child, particularly when considering policies and actions related to economic development.
- c) **The principle and right to life, survival and development:** we recommend merging the sections on the right to life and to survival and development. as many of the recommendations addressed across the two separate sections are relevant to both the right to life and survival and development. It is important to clearly state that children's inherent

right to life is under serious threat in light of the current levels of environmental degradation and devastating impacts of climate change, as evidence shows – in particular during the early years. Children’s **survival and development** can only be secured if natural resources and the vital functions of the planet are preserved, that is, if that development is sustainable. In this context, child rights impact assessments on government decisions related to development must be part of a child-rights based approach, taking into account the principles of non-discrimination and the right to be heard, as per the Convention.

Recommendations on the proposed section on child rights violated and undermined as a direct result of environmental degradation and climate change:

- a) **On the right to health:** States must ensure that children affected by disasters have access to trauma care teams. In emergency set ups, states should ensure health accessibility by children through mobile maternal and child health services. Access to health and a clean environment by adolescent girls and pregnant or lactating young mothers is essential as children are already impacted by environmental degradation when in-utero, during pregnancy and lactancy through their mother's exposure. Early childhood is a time when children are particularly vulnerable to environmental degradation and climate change so this critical period should be a particular focus of policy makers. States should also support continuous access to sexual reproductive health and rights, including access to information and services.
- b) **On right to food:** the GC should explicitly recommend Governments to include the services of health professionals based on the different needs of affected children. This part should also reinforce States’ obligations to ensure that in times of climate-related disasters, children’s access to healthy (raw and not processed) food is reestablished as fast as possible.
- c) **The rights of children with disabilities:** there is room for improvement in making more consistent and systematic the inclusion of children with disability throughout the text, particularly when referring to States obligations.
- d) **The rights of children on the move:** it is essential that the GC states clearly that there is a trend of increase displacement of children resulting from natural hazards caused by environmental degradation and climate change. 23.7 million people were internally displaced in 2021 as a result of disasters (IDMC data). Globally, an estimated 1.2 billion children live in an area at high risk of flooding, severe drought, or other climate threats that pose a serious risk to lives and livelihoods (Save the Children: Walking into the Eye of the Storm: How the climate crisis is driving child migration and displacement P2). 1 billion children live in urban areas, many of which are located in low-lying coastal areas or on floodplains with high exposure to climate threats (UNICEF and IDMC, 2019 P3). Displacement increases the vulnerability of children to the violation of their rights. Obligations and measures of implementation related to this are included in a scattered manner throughout the GC. Given the special characteristics of children on the move (internally displaced, migrants and refugees), it is suggested to group them under a separate section emphasising that the rights of displaced children through be secured, including those of migrant children, at the same standard levels than those children who are not displaced.

- e) **Links between environmental degradation, climate change and violence against children (Article 19):** Children are at greater risk of violence, abuse, trafficking, and exploitation, including sexual and gender-based violence during and post disaster and in humanitarian settings. In addition, disasters exacerbate pre-existing vulnerabilities. Poor and struggling families lose the little security they had and may be forced to make desperate decisions that have long term negative impacts on children, such as withdrawing a child from school and/or arranging child, early or forced marriage, which can also lead to unwanted or unintended adolescent pregnancy for girls. Adolescent girls report high levels of sexual harassment, abuse and gender-based violence in the aftermath of disasters. See for these examples: A study in [Somalia found that children faced increased violence and exploitation as drought worsened](#) (Save the Children, 2017). The extreme drought led to family separation, with parents leaving the home for long periods to find work or resources. Vulnerable left-behind children, especially girls, report rapes and beatings as they tried to collect firewood, look after livestock, or fetch water. Many children had to work to support family income and children's school attendance had declined. High levels of psychological distress among children were reported.
- f) **The right of Indigenous children:** emphasise environmental impacts are not equally distributed and Indigenous children and children from traditional communities are more affected by environmental degradation and climate change. Therefore, it is necessary that States take into consideration the reality and the demands of these children, especially their connection with nature itself and the importance of the land to their right to culture and identity. Reference to the General Comment 11 on Indigenous children and their rights under the Convention should be made, highlighting that the main principles and obligations included in that GC should apply in the contexts described in this GC. GC 11 does not cover important elements like Free, Prior Informed Consent and elements related to the right of Indigenous children to a clean, healthy and sustainable environment. We also support the current terminology in para 50: children of peasants, children in rural areas - derived from the UN Declaration on the rights of peasants <https://digitallibrary.un.org/record/1650694>
- g) **Right to education:** This section needs to make clear that this right falls under two categories: a right that is affected **negatively** by environmental degradation and climate change, especially girls' education: when schools are destroyed by natural hazards or heat impedes children to learn properly; and a right that, can help **positively** as, through its fulfilment, it empowers children to act as child human rights defenders and can be part of the measures of protection of children from environmental degradation and climate change. Children can also become actors in mitigating the effects of environmental degradation. Both aspects are included in the current text but, for better comprehension, it could be rearranged under these two aspects. In terms of environmental education, the environmental degradation and climate change should be made [compulsory for primary and secondary school](#) by all State parties to the Convention. We encourage the Committee to consult [UNESCO's 2021 report](#) which articulates how this can be pursued in practice

Recommendations on the proposed section on child civil and political rights and rights related to children empowerment:

- h) **On access to information and best available science:** it should be clearly stated that States have the obligation to ensure that the best available science is accessible by all children and their parents/caregivers without discrimination. Additional efforts should be made by States to ensure that children from marginalised communities have access to the best available evidence. At the same time, States should also **protect children and their parents/caregivers from misinformation** such as climate denial and promulgation of similar harmful views, materials and content that undermine urgently needed climate action. States must regulate misleading advertising of products that are harmful to the environment and their integrity. States should also regulate the promotion of a consumerist and materialist culture that ends up generating severe damages to the environment, especially from plastic waste.

RECOMMENDATIONS ON OTHER SECTIONS OF THE GC:

- i) **On climate change and its treatment in separate section:** as said above we propose to integrate the climate considerations in the recommendations under each group of rights. Among the recommendations to be introduced specifically on climate change: i) States must ensure, as of 2023 and in light of IPCC research, that **temperature does not increase 1.5 degrees (and not 2 degrees as in the current draft GC)** as it may cause irreversible damage, including serious violations to children's rights. ii) States must ensure that mitigation measures should not rely on **technologies** that have not yet proven to be effective and carry significant risks for human and child rights, as outlined in academic and UN publications. (Para 111 e) iii) States must **stop providing fossil fuel subsidies** and other incentives, as these violate government human rights obligations related to climate change. (delete "consider". (para 112)) iv) ensuring that international cooperation, particularly between developed and developing countries, is driven by **climate justice** and not profit, such as carbon trading, and therefore establishing systems of remedies to compensate for the **loss and damage** suffered by some countries and communities as a result of climate change. (The climate COP27, 2022 paved the way for the development of a loss and damage fund which could be a model for other loss and damage schemes)
- j) **On child rights and business:** is covered in 2 sections (one specific on Climate). Obligations are similar. They should be merged into 1. Paragraph 101 also focuses too much on the role of businesses without a strong ask for a necessary strengthening of the role of States as per their obligations under IHRL to regulate the activities of businesses to respect, protect and fulfil children's rights; and to guarantee access to effective remedies when abuses occur. In that regard, reference to the GC 16 on State obligations regarding the impact of the business sector on children's rights could be made using some of its language. Specifically relevant for this GC are the threats that businesses strategies and activities represent for the rights of children in the context of new incentive measures and false solutions to the triple planetary crisis. Indeed, these often create new markets and profit-generating opportunities that may be labelled as "green" but are not sustainable or even effective and often result in child rights abuse such as child labour, forced evictions, disruption of access to water, forests, among others. This is particularly true with regard to geo-engineering. References to "supply chains" should be changed by "value chain". The UNGPs take a 'value chain' approach, which includes upstream risks/impacts (for instance from sourcing) and downstream risks/impacts (for instance disposal / use). Conservative business in the OECD are currently trying to argue

that their standards apply only to 'supply chains', which is highly problematic, so would be very careful to refer to 'value chains' throughout this document.

- k) **Child rights impact assessment:** it should be integrated in the section on right to a clean, healthy and sustainable environment.
- l) **On missing or scattered issues:**
 - i. **Links between gender and environmental degradation and climate change:** this issue is scattered through the text and weak in its representation. [Environmental degradation and climate change increases women and girls' unpaid care workload](#), further deepening gender inequalities. Environmental degradation and climate change can also increase girls' risk of sexual and gender-based violence, child early and forced marriage, adolescent pregnancy, and being removed from school. An example of the specific impact on women and girls is that, in many parts of the world, they spend a long time walking long distances to fetch water. With shortage of water, this double burden could increase. Also, with less water, it may affect their menstrual hygiene. Also, they would curb on intake to save water, fetching water multiple times leading to UTI and kidney stones.
 - ii. **Governance-related measures:** this issue is covered in a scattered manner. It would be useful to include under obligations of states under each rights group emphasising the need for inter-ministerial collaboration (suggest establishment of inter-ministerial task force groups, as some governments are already doing) and recommendations on working arrangements with civil society.

