**Submission by Professor Aoife Nolan[[1]](#footnote-1)**

I very much welcome this draft of General Comment No.26. It is a strong, convincing set of guidance overall. Given space constraints, my comments will focus on those elements of the draft that, in my opinion. would benefit from further attention. However, I wish to congratulate the Committee and those supporting them in their endeavours in this regard for producing an excellent draft. I have also produced comments in track on the draft General Comment which I will submit as an appendix. I would be delighted to provide further information on any of these comments, if that was useful to the Committee.

My comments are structured in line with the text of the draft.

I. Introduction

The Committee states: ‘[t]he efforts of children to transform the environmental and climate justice movement are the inspiration for the present general comment.’ Was it in fact the efforts of children to ‘transform … movement’ that inspired the General Comment (which potentially suggests a shortcoming in that movement rather than the situation that that movement is responding to) or was the General Comment inspired by the efforts of children to advance environmental and climate justice?

*Section A*

In other General Comments, the Committee has used the language of a ‘child rights approach’ rather than a ‘child rights-based approach’.[[2]](#footnote-2) It is not clear why there has been this shift in language but, given the Committee’s earlier approach, it might be useful if that shift could be explained. (It is not evident to this reader why the Committee would need to revise its previous approach for the purposes of this General Comment).

This section says relatively little about what a ‘child rights-based approach’ is (whether in the context of the environment or not). The Committee might consider adding that such an approach involves ‘the use of children’s rights as a normative framework to inform and assess the inputs, outputs, processes and/or outcomes of child-related decision-making, including that related to the environment’ (or something similar).

I am not clear what paragraph 8 adds in terms of explaining what a ‘child rights-based approach to the environment’ involves. Might this paragraph be moved to the Introduction (perhaps being merged with existing paragraph 5)?

II. Key Concepts:

*A:*

This paragraph on sustainable development is primarily descriptive. It advances a particular (potentially controversial) understanding of sustainable development and refers to the link between sustainable development and the realisation of children’s rights. It would be useful to make clear why this definition has been used rather than the celebrated definition set out in the Brundtland Commission report. Whatever the definition used, it is important that a reference would be made to the implications of children’s rights for sustainable development (both as a concept and associated processes). In practice, sustainable development is not necessarily child rights-consistent (either conceptually or in terms of its implementation) and may in fact be undermining of child rights.[[3]](#footnote-3) It is therefore crucial to reinforce that sustainable development must be informed by children’s rights.

*B:*

It is positive that the draft refers to the issues of intergenerational equity and future generations (both in this section and paragraphs 12, 21 and 73). However, this section could be strengthened significantly. The Committee itself has previously acknowledged ‘the potential complexities in the definition of, and relationship between, children and future generations’.[[4]](#footnote-4) As currently expressed, this draft adds to rather than reduces those complexities. For instance, the draft states that ‘[d]iscussions of future generations should take into account the rights of children who are already present on this planet and those constantly arriving’. What exactly does this mean? Which discussions? Involving who? And how should the discussions/the actors having them take children’s rights into account? This statement, as well as the reference to ‘present and future generations’ in paragraph 12, clearly raises the question of whether children are in fact members of future generations themselves,[[5]](#footnote-5) a question to which there is no definitive answer under IHRL at present. The situation is further confused by the reference to ‘the current and future generations’ in paragraph 73: are children understood to fall under current generations, future generations or both? The draft states that ‘[t]he Committee recognizes the principle of intergenerational equity and the interests of future generations’ but, as the draft stands, it does not adequately address the inter-relationship between future generations’ interests and those of children. Nor does it engage in a meaningful way with the implications of children’s rights for the interpretation and application of the principle of intergenerational equity.

This would be less of an issue if the draft did not present ‘Intergenerational equity and future generations’ as a key concept: for instance, if it merely mentioned future generations and intergenerational equity briefly in the introduction (although I would not recommend this given the centrality of these issues to current debates around children’s rights and the environment). Where something is a key concept, it should be outlined clearly. It would be perfectly possible for the Committee to acknowledge the complexity in the definition of, and relationship between, children and future generations, while stating that the particular susceptibility of children to the multiple, cumulative and long-term impacts of environmental degradation, demands that children's rights - both those of children in the here and now and those of future child rights-bearers - directly shape and inform state efforts to address the intergenerational dimensions of environmental harm. This does not require the Committee to adopt a specific definition of future generations.

III. Specific rights of the Convention as they relate to the environment

There appears to have been a decision taken to move away from including a section on the general principles, which is an important feature of other General Comments. There are, of course, many reasons why the Committee might choose to do this. However, given its long-standing practice, it needs to be clearer to the audience(s) for the General Comment why the Committee has chosen to do this. As it stands, the inclusion of the General Principles provisions in a longer list of provisions serves to undermine their status as a set of cross-cutting principles that apply to all child rights-related areas and issues. More generally, the logic of the ordering of rights as it stands is not clear and could usefully be looked at again. If the decision is not to have a section on general principles (even as a paragraph in the introduction), then Articles 6, 12, 3(1) and 2(1) should go at the beginning of the list of rights set out in Part III.

With regard to the rights listed, the lack of reference to Article 19 seems surprising given the (at this point well-documented) risks posed by the impacts of environmental harm on Article 19-related protections (including increased risks of child marriage, child trafficking and slavery). Similarly, the linkage between child labour and climate change would seem to justify an express reference to Article 32, even if only briefly.

*A:*

The division of Article 6 into ‘the right to life’ and ‘the right to survival and development’ is not particularly effective. Given the intertwined nature of the rights and obligations imposed by Article 6, this article would be more effectively dealt with in one section entitled ‘the right to life, survival and development’. Given the wording of Article 6, it would be useful to change the language of the first sentence in paragraph 18 to read: ‘States should implement laws and policies that ensure children’s survival and physical, mental, spiritual, moral, psychological and social development *to the maximum extent possible*.’ Furthermore, the next sentence would benefit from a reference to ‘The survival and development of children’ rather than simply focusing on the ‘development’ of the child, as is currently the case. Finally, paragraph 20 refers to ‘environmental actions’. This would benefit from being rendered more specific.

*F:*

It would be good to see a reference to the role of indigenous children as guardians of nature in order to expand the focus of this section to incorporate children’s agency.

*G:*

Given the Committee’s previous practice, the heading of ‘G’ would be more effectively expressed as ‘the obligation of non-discrimination’ (albeit that this potentially raises issues given the title of Part V).

While it is positive to see reference to the groups delineated in paragraph 50, more attention could be paid to specific groups of children across the draft, particularly children in a migration situation and refugees. While these groups and migration-related issues are mentioned in different parts of the draft, it would seem appropriate to devote a discrete paragraph to these groups in the way that has been done with indigenous children.

IV. The right to a clean, healthy and sustainable environment

The inclusion of the right to a clean, healthy and sustainable environment is very welcome and an important ‘value added’ element of the draft. It would be useful, however, if the right as outlined could be rendered more child-specific. This could be achieved by, amongst other things, making paragraphs 73(c)-(e) child-specific.

The division of the ‘substantive’ and ‘procedural’ elements of the right into paragraphs 72 and 74, respectively, is not terribly convincing. It may be more effective to address the issues highlighted in paragraph 74 in the form of specific, explicitly child-centred actions to be taken by states (i.e., under paragraph 73). There is also scope for cross-referencing to remove elements of paragraphs 74 that are already addressed in detail elsewhere in the draft. At the very least, the contents of paragraph 74 should be moved up below paragraph 72 before turning to the actions states must take (currently addressed in paragraph 73).

Paragraph 73 states that the listed actions must be taken ‘immediately’. Given the wording of Article 4 as well as the language used in parts of paragraph 73 (e.g., ‘phase out’ and ‘transform’), it would be useful to consider further the extent to which all of the actions delineated correspond to immediate obligations under the Convention (which is what this paragraph is likely to be understood to mean).

V. General obligations of States

*A:*

I have included extensive comments in track on the text on the tripartite typology.

Paragraphs 78 and 79 would seem to map on to Article 4 rather than the tripartite typology. As such, separate headings here would seem appropriate. CRC General Comment 19 provides a useful model for such an approach.

Paragraphs 80 and 81 are not framed in terms of the tripartite typology. Again, the addition of appropriate section headings seems necessary here. Alternatively, these paragraphs could be relocated elsewhere in the general comment.

*B:*

The section on ‘heightened obligations’ would benefit from significantly more development and support than is provided here. One option might be to state in Part IV that children are owed ‘heightened obligations’ in terms of the right to a clean, healthy and sustainable environment as compared to other groups. This would serve to render that section more child-specific. Another, probably more straightforward option, is to delete this section from the draft entirely.

VI. Climate change

*A:*

Much of what is said on obligations is repetitive of earlier sections of the draft. This is particularly true of paragraphs 100 and 101. These could be cut and the section refocused on implementation and accountability. Alternatively, this section as a whole could be removed with paragraph 103 refocused to form part of Part IV on the right to a clean, healthy or sustainable environment and paragraph 102 incorporated in Part V on the general obligations of states.

There are currently separate sections on ‘Children’s Rights and the Business Sector’ in Part V and ‘Business and climate change’ in Part VI. This is not ideal structure-wise and should be reconsidered.

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2. See, e.g., see, e.g. UN CRC, General Comment No. 21 on children in street situations (2017) CRC/C/GC/21, [5], [10]–[11]). [↑](#footnote-ref-2)
3. See A. Nolan, ‘Is Sustainable Development Bad for Children’s Rights?’ (British Academy, 2021), <https://medium.com/reframing-childhood-past-and-present/is-sustainable-development-bad-news-for-childrens-rights-13b78e3b30ce>. [↑](#footnote-ref-3)
4. Committee on the Rights of the child, ‘Submission on the Draft Convention on the Right to Development’, <https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/2022-08-23/CRC-Draft-Convention-Right-to-Development.pdf> [↑](#footnote-ref-4)
5. This approach was argued successfully before the Colombian Supreme Court of Justice in Colombian in STC 4360-2018 (‘Future Generations v Ministry of the Environment & Ors’). [↑](#footnote-ref-5)