**Comments on the Committee on the Rights of the Child’s**

**Draft General Comment No. 26 (202x) on children’s rights**

**and the environment with a special focus on climate change**

**Child Justice Network | 26 December 2022**

The Child Justice Network (CJN) welcomes the development of a General Comment addressing a grave and ongoing issue with widespread and disproportionate impact on children. We submit the following general observations and comments on specific paragraphs of the draft GC in order to build in additional safeguards for children, especially in their access to justice.

The proposed revisions to the text have been bolded and marked in **dark red**. Though the word “should” was used for these revisions, it should be replaced with the word “shall” whenever deemed appropriate.

**I. GENERAL OBSERVATIONS**

**a. Terminology**

First, we would like to inquire whether the Committee decided to use the phrase “**child rights-based approach**” (paragraphs 6-7, 31, 106, and 119, and title of section I(A)) instead of “**child rights approach**” as had been defined in GC No. 21. Although this may be considered a minor difference, and we often speak of “rights-based” approaches, we would suggest **consistency** unless the word choice was intentional.

Second, we would suggest **inserting a** **terminology section** under the key concepts section to define some key terms used in the GC, similar to the approach taken in GC No. 24. For example, this may include terms such as future generations, climate justice, and child rights impact assessment or due diligence. The concept of future generations was introduced in GC No. 19 and explained in paragraph 13 of the present GC, but perhaps a more concrete definition would be necessary, considering its implications for justiciability, legal standing, and the varying practices around the world (e.g., certain countries having ombudspersons that represent the interests of future generations). This would also be important given the ongoing debates about the applicability of the CRC on future generations and whether or not it is desirable to do so.[[1]](#footnote-1) Climate justice is another term that has diverse definitions and interpretations by different entities, and thus would be helpful to define in the GC.

**b. Structure**

First, we suggest **moving section IV to come before section III**. The unequivocal statement that children have the right to a clean, healthy, and sustainable environment should be introduced up front, as it serves as the basis for this GC and would play an essential role in the public discourse on this topic. We do understand why the GC has been ordered as it currently is in the draft, but we believe section IV nicely sets the stage for section III.

Second, we believe there is a fair amount of overlap between sections III, V, and VI. Although we understand the reason for the division of these sections and acknowledge the additional details provided in sections V and VI, we think it may lead to confusion among the readers who may miss important guidance if they are not reading the GC in its entirety. Rather than repetition, we would suggest **combining sections and paragraphs** linked to specific obligations and rights, so that readers would not need to jump around the GC to locate guidance on similar topics. Background and scientific details could perhaps all be included in the introductory or context section.

If the sections are retained as they are now, we suggest including statements that **direct readers to relevant preceding paragraphs that provide guidance**, rather than repeating the substance (some of the additional details currently in those paragraphs can be integrated into the related prior paragraphs). This would also reduce the number of pages, making the GC more likely to be reviewed in whole.

**II. PARAGRAPH-SPECIFIC SUGGESTIONS**

**a. Paragraph 37**

Children pass through harsh environments to gain physical access to schools on a daily basis, such as crossing rivers with strong currents and walking under the scorching sun for hours. As such, a focus needs to be placed on physical access at all times, which is not sufficiently covered by paragraphs 36 and 37.

Thus, we suggest revising this paragraph as follows: “States should ensure **safe and** **easy** physical access to schools **on a daily basis and particularly** during severe weather events. . .”

**b. Paragraph 43**

Given the importance of child rights impact assessments (CRIAs) and due diligence as emphasized in other parts of the GC, we believe that stronger language can be used in this paragraph. We note that the GC is not consistent throughout the document in this regard, but since this paragraph is the first time that the assessments are introduced, it would be preferable to use stronger language.

Thus, we suggest revising one word in this paragraph as follows: “. . . Child rights impact assessments **shall** be a prerequisite for such projects. . .”

**c. Paragraph 50**

The term “peasant” is used by some individuals in a degrading manner and is thought by many to carry a negative connotation. We acknowledge the existence of the *UN Declaration on the Rights of Peasants and Other People Working in Rural Areas* and the usage of the term within the UN System. We also recognize that the term may have been intentionally used in this paragraph to both promote its positive usage and to highlight that the terminology itself has unjustifiably been giving rise to discrimination. But it is possible that individuals without this background knowledge may consider the Committee to have been insensitive in using this word.

Thus, we might suggest revising the word in this paragraph as follows: “. . . indigenous children and children of minority groups, children of **agricultural households**, children in rural communities . . .” We recognize this does not capture the full definition of a peasant, but it would be considered less contentious. However, we do not see a large issue with retaining the term peasant as it is now.

**d. Paragraph 60**

Strategic lawsuits against public participation (SLAPP) have been an increasing concern, including those against environmental child human rights defenders in their statements made either orally or via digital means, including private messages that were not meant for public disclosure. We consider the term SLAPP to be somewhat misleading and not widely understood, but we think it is necessary to specifically make reference to prohibiting similar practices, as an extension of what is already mentioned in this paragraph about preventing the abuse of defamation and libel laws. In addition, human rights defenders are often subject to malicious prosecution by the authorities, which should be specifically mentioned in the GC as a matter of accountability.

Thus, we suggest revising the last sentence of this paragraph as follows: “. . . including through adoption and implementation of laws to protect child rights defenders in accordance with international human rights standards **(such as the prohibition of and accountability for retaliatory legal action and malicious prosecution)**, raise awareness. . .”

**e. After paragraph 63: new paragraph 64**

Although the GC touches on laws to enforce various rights of children, it does not make concrete reference to justiciability for children’s right to a clean, healthy, and sustainable environment, which serves as the basis for access to justice and remedies. Given that the GC makes an unequivocal statement that children have this right, we believe that specific reference should be made about legal frameworks for the many countries that have not yet specifically stipulated this right. In addition, there is a need to emphasize the importance of justice processes during emergency situations, and the *2021 Global Declaration on Justice With Children* provides applicable guidance in this regard.

Thus, we suggest adding a new paragraph as follows: “**States should develop proper legal frameworks to ensure that children’s right to a clean, healthy and sustainable environment is justiciable, to reinforce the regulations for State and non-State actors in this regard and to strengthen the penalties against violators of this right. States should ensure that these laws are properly disseminated to justice system actors, including judges and prosecutors. Furthermore, States should establish resilient and innovative justice processes and procedures for children during emergency and non-emergency contexts to enable sustainable access to justice for all children. As part of the clear protocols for interagency and multisectoral cooperation in emergency/crisis planning and response, States should ensure that key bodies in the justice and child protection systems are considered to be essential services that are allowed and prioritized to operate during times of natural disasters, emergencies, pandemics and other hazardous situations.**”

**f. Paragraph 64**

In order to mitigate the barriers faced by children in accessing complaints mechanisms, it is important to highlight the additional options that can be made available to children. The *Principles and Policy Guidance on Children’s Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region* provide applicable guidance in this regard.

Thus, we suggest adding the following sentence at the end of this paragraph: “. . . **States should also ensure that children can file complaints both offline and online, through secure, tested and technically maintained systems, especially in times of emergencies, and States should provide avenues for children to file anonymous reports when appropriate.**”

**g. Paragraph 66**

Although paragraph 65 mentions that complaint mechanisms should be free of charge and paragraph 66 mentions that measures should be put in place to lower the costs for children seeking remedies, we believe a more direct and comprehensive statement could be helpful as guidance.

Thus, we suggest revising the last sentence of this paragraph as follows: “. . . for example through protection from adverse cost orders to limit the financial risk to children bringing cases in the public interest concerning climate harm**, and the waiving of filing fees and other administrative expenses for lawsuits, complaints, petitions, applications or other requests filed by children**.”

**h. Paragraph 68**

Individuals are often harassed and threatened when speaking out against powerful corporations and States on environmental cases, whether as an eye/lay witness or expert witness.

Thus, we suggest adding the following sentence at the end of this paragraph: “. . . **In addition, States should ensure proper witness protection and support for those who legitimately testify in favor of children’s rights, especially when testifying against powerful corporations or the State.**”

**i. Paragraph 69**

We suggest revising this paragraph as follows: “Appropriate reparation includes . . ., including access to medical and **psychosocial** assistance. . . Reparation should be swift to limit ongoing and future violations **in a realistic and time-bound manner**. . .”

**j. Paragraph 74**

We suggest revising this paragraph as follows to avoid confusion: “Procedural elements have similar importance, including access to information, participation in decision-making and access to justice with effective remedies, **which can empower** children, including through education, to become agents of their own destiny, **who** actively **shape** their future rather than passively inheriting a clean, healthy and sustainable environment.”

**k. Paragraph 89**

CRIAs should be an ongoing process, rather than a one-time ordeal prior to an action being taken.

Thus, we suggest adding a sentence in this paragraph as follows: “. . . and make recommendations for alternatives and improvements. **Child rights impact assessments should also be conducted routinely in the course of implementing a project, action, business activity and other initiative to take into account situational developments and adapt to the changing circumstances.** Findings of . . .”

The **Child Justice Network (CJN)** is a partnership between civil society organizations and UN agencies in Cambodia actively working to build and enhance the child justice system, develop and operationalize child-friendly procedures, ensure access to justice for children, and promote the rights of children in the justice system. As of December 2022, the network has 25 active members. Visit [www.childjusticecambodia.org](http://www.childjusticecambodia.org) for more information. For inquiries about this submission or the network, please contact Mr. Ha Ryong JUNG (Michael), Co-coordinator, Child Justice Network, [haryong.jung@gmail.com](mailto:haryong.jung@gmail.com).

1. This would also be a helpful contribution to the ongoing development of principles and resources like the Maastricht Principles on the Rights of Future Generations and the UN Declaration on Future Generations. [↑](#footnote-ref-1)