**Joint submission to the draft of the General Comment 26 on children’s rights and the environment with a special focus on climate change**

**15.02.2023**

**On behalf of**

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The present signatories welcome the Committee's decision to publish and submit the draft of the GC26 for public scrutiny, which demonstrates its commitment to transparency and participation. We especially welcome the latter, strong feature of this GC, with the participation of so many children around the world.

1. **Structure and format of the GC 26:**
2. **To add a section General Measures of Implementation (similar to section on Framework for Implementation VI in the GC 16) to list the legislative, regulatory and enforcement measures of States under the GC 26**

**Recommendation**: For Instance, Section D. on precautionary principle and other legislative, regulatory and enforcement measures could be listed under the section General Measures for implementation/Framework for implementation.

1. **Children’s rights and the business sector (para. 90-93) and business and climate change sections (para. 114-118)**

These two sections of the GC 26 cover very crucial responsibilities of businesses to protect and respect children’s rights, the environment and the climate throughout their activities (supply and value chains). Transnational activities of businesses also trigger extraterritorial responsibilities and obligations as mentioned in para. 68.

Considering that the GC 26 should be read in conjunction with the GC 16, we would like to make the following **Recommendations:**

1. to merge the sections on children’s Rights and the business sector with the section on business and climate change, in order to create a clear and specific section States obligation and business responsibilities with regard to the environment and to climate.
2. to mention the term “extraterritorial responsibilities of businesses” to respect children’s rights (also in line with the UNGPs and the GC 16)
3. 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). The GC 26 should refer to value chain (upstream/downstream) throughout the document.
4. **Content of the GC 26:**
5. **Para. 50. – Children of peasants and children in rural areas**

We welcome the recognition of the rights of indigenous children, children of peasants and children in rural communities: By mentioning the right of children of peasants and children in rural communities, the GC 26 is also supporting the implementation of the [UN Declaration on the rights of peasants and other people working in rural areas (UNDROP).](https://digitallibrary.un.org/record/1650694)

**Recommendation**: to keep the wording of Para. 50 on the right of children of peasants and children in rural areas and to include the reference to the UNDROP as a footnote for definition purposes.

1. **Access to justice (Art 4.)**

**Para. 66.**

We support the wording of para. 66 on financial support for children seeking remedies. Court proceedings related to the right to clean, healthy, and sustainable environment by child plaintiffs will become more frequent in the future.

**Recommendation**:

1. To consider the option for States to establish – at national, regional or international level - a fund to cover the costs of children seeking remedies.
2. Regarding grievance mechanism - to highlight that the granting of effective grievance mechanism by businesses should never exclude the right to access judicial mechanism.

**Para. 67.**

Collecting proofs in environmental and climate matters can be very difficult, especially in cross border cases.

**Recommendation:** the wording of para. 67 should address the option of a reversal of burden of proof and not only the *options to reduce the onerous burden of proof on child plaintiffs.*

1. **Promoting a sustainable food system in the context of climate change in the GC 26**

*“Without lowering emissions coming from the entire food chain, we cannot keep 1.5°C alive. Equally, unless we address the ongoing climate crisis, our food system will be at risk.”* UN Climate Change Executive Secretary Simon Stiell during the COP 27.[[1]](#footnote-1)

Regarding para. 72 and para. 73 c) Transform industrial agriculture -

**Recommendation:** The GC 26 could, not only mention, but also elaborate more on the form of agriculture and food system that would be more biodiversity -, environmentally -, climate friendly. In the report A/HRC/34/48, the Special Rapporteur on the right to food presented Agroecology and agroecological farming as an important alternative to industrial agriculture. (see para 92. and para 95. in A/HRC/34/48)[[2]](#footnote-2).

A/HRC/34/48 Para. 95:

*Agroecological farming can help secure livelihoods for smallholder farmers and those living in poverty, including women, because there is no heavy reliance on expensive external inputs. If properly managed, biodiversity and efficient use of resources can enable smallholder farms to be more productive per hectare than large industrial farms (A/HRC/16/49).*

1. **Extraterritorial responsibilities of States regarding international trade in chemicals**

According to the [A/HRC/37/58](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/29/PDF/G1801729.pdf?OpenElement) para. 74. *States should cooperate to address the effects of environmental harm on the rights of children, including by sharing information on the toxicity and other characteristics of chemicals and other products and ensuring that international trade in chemicals and waste is in full compliance with the relevant environmental treaties.*

The current draft of the GC 26 underlines the issue of *pollution associated with industrialization including exposure to toxic substances* in para. 24 in the context of the right to the highest attainable standard of health (Art. 24) and indirectly in para. 73 (c) on the transformation of agriculture to produce healthy and sustainable food.

According to the *pesticide atlas* by the Heinrich Böll-Stiftung and others (2022)*, the global pesticide market has almost doubled in the last 20 years. By 2023, the total value of all pesticides used is expected to reach nearly 130.7 billion US dollars. The EU is also the top exporting region, increasingly selling to countries of the Global South where pesticides actually banned in the EU can be exported. In 2018, European agrochemical companies planned to export 81.000 tons of pesticides prohibited on their own fields[[3]](#footnote-3).*

The impact of pesticides on children have also been highlighted in the report A/HRC/37/58[[4]](#footnote-4) in para. 29 and in the report A/HRC/34/48[[5]](#footnote-5) in para 24.

**Recommendation**: The GC 26 should stress the issue of toxic pesticides and its impact on the right to health, the right to food and water and the right to of future generations in the context of biodiversity loss. Businesses should have the extra territorial responsibility to respect these rights and to refrain from exporting toxic pesticides, especially the ones that are prohibited on their home market.

1. **Section F. Children’s rights and the business sector**

**Para. 92.**

**Request for clarification** – the following wording in para. 92 should precise clearly what person/state body/international body… has the responsibility/legal capacity to identify children as victims: *Immediate steps should be taken in the event that children are identified as victims of environmental impacts to prevent further harm to their health and development, and to repair damage done in a timely manner.*

Based on the para. 92 one could derive that children might be identified as victims of environmental impact during the due diligence process of a business. However, due to the burden of proof on child plaintiffs and the potentially lengthy court proceedings in environmental matters it might take some time for children to be identified as “victim” by a judicial court. It would be helpful to clarify or specify as such: *“are identified as victims or potential victims during the due diligence process.”*

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.

1. **Free prior and informed consent (FPIC) for indigenous children**

The FPIC is a very central right for indigenous communities. It is a tool that guarantees the right to self-determination of indigenous communities.

**Recommendation:** The GC 26 could explore and mention this very crucial right and its meaning for indigenous children. For instance, under Para. 49, Para. 50, Para. 56, para. 87…

1. **The primacy of international children’s rights in the light of international trade agreements**

We support that Para. 118 addresses the obligation of States under trade agreements.

**Recommendation:** The GC 26 could be used to underline the primacy and the binding nature of the CRC towards existing and new trade agreements.[[6]](#footnote-6)

1. **Environmental Human Rights Defenders**

The idea of criminalization of environmental human rights defenders have been under discussion in some EU countries during the past months. Children and youth fall under the criminal law at the age of 14, in some other countries, the age of criminal responsibility is even lower.

**Recommendation:** the issue of criminalization of child environmental human rights defenders as an infringement to their rights according to Article 13 and 15 could be addressed under para. 59-61 or under a specific section on human rights defenders.

1. **Impact of environmental degradation, climate change and the sexual exploitation of children**

**Recommendation:** The GC 26 should draw attention to the link between climate change that leads to displacement, loss of livelihoods and forced migration and its resulting consequences such as increased violence and exploitation, including sexual exploitation of children.

1. **Concrete wording proposals**

After ¶ para. 9 we suggest adding the following text: “**The Intergovernmental Panel on Climate Change (IPCC) indicates that businesses are the great responsible for anthropogenic Greenhouse Gas Emissions. Therefore, they have contributed and continue to contribute to the climate emergency that we are currently facing.  Children, especially those from marginalized communities in less developed countries, suffer most severely and disproportionately from the adverse impacts of climate crisis. The Guiding Principles on Business and Human Rights provide a comprehensive framework for preventing and addressing human rights impacts related to business activities, including impacts linked to climate change**”.

On ¶ para. 11(c) we suggest the addition of “and the role of the business activities”. It will then read: **(c) Clarify the obligations of States parties to the Convention and the role of the business activities (…) and provide authoritative guidance on legislative, administrative and other appropriate measures to be undertaken with respect to environmental issues, with a special focus on climate change**.

Since the Guiding Principles on Business and Human Rights (UNGPs) are the UN authoritative framework, we find that the aftermath of this GC would be enhanced if it also mentions, in para. 10. We suggest adding, at the end: “**e) the Guiding Principles on Business and Human Rights, which outlines the responsibility of business enterprises to respect human rights refers to internationally recognized human rights”.**

The same goal will be achieved if after para. 21 a new para. is added to refine the message that businesses also have responsibilities towards children. We suggest:

**“Businesses may cause environmental degradation or contamination of a certain area and compromise the health, food security, and access to drinking water and sanitation for the population. Consequently, States must guarantee the physical, mental, spiritual, moral, psychological, and social development of children by adopting precautionary measures, such as effective regulation and monitoring, as well as conduct aimed at effective remediation if damage has occurred”.**

Regarding the more specific suggestions, the recognition that States have obligations and corporations have responsibilities goes hand in hand with the UNGPs, that is why we suggest that ¶ para.13 reads **“… Securing the realization of the right of each child to development to the maximum extent in the optimal environment necessarily requires States to implement their obligations under the Convention, and businesses to respect the rights it enshrines,….”**

When tackling precautionary measures, we suggest adding in para. 15: **“Businesses shall mitigate and prevent greater future climate damage and ensure climate justice, using instruments such as Child-rights Impact Assessments and Human Rights Due Diligence, as provided for in the UNGPs, in order to be part of the solution**”.

At the end of ¶ para: 22 we suggest adding “as well as space and opportunity to voice their opinion”, that will read: **As children mature, they increasingly act as agents of change with the potential to contribute positively to their families, communities and countries. Globally, children make significant contributions towards environmental sustainability and climate justice. They should have access to adequate environmental information and education focusing on respect for the natural environment, sustainable lifestyles, as well as space and opportunity to voice their opinion leading a responsible life in a free society.**

After ¶ para. 49 we suggest adding a para. that reads: **“The extensive cutting or burning of trees and forest, primarily for timber and fuel, or to clear land for other uses, such as agriculture, livestock mining, or construction, is the largest contributor to Greenhouse Gas Emissions, and is considered a threat to sustainable development. Healthy forests are essential for food security and livelihoods of approximately 1.6 billion people globally, including some 60 million indigenous who are almost entirely dependent on forests. In this sense, the States have the obligation to protect, and must use all the instruments, such as public policies, laws, administrative acts, and judicial decisions, in order to mitigate the negative consequences of their and third parties’ activities and to promote production models that avoid climate change”.**

We also suggest adding para. 51: **“States should ensure that business activities share the best practices and use appropriate tools, including Human Rights Due Diligence, when tackling the challenges faced by children”.**

**For questions or request for clarification of the content please contact:**

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1. <https://unfccc.int/news/governments-step-up-action-on-agriculture-and-food-security-at-cop27> [↑](#footnote-ref-1)
2. A/HRC/34/48 Para. 92 and para. 95: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F34%2F48&Language=E&DeviceType=Desktop&LangRequested=False> [↑](#footnote-ref-2)
3. <https://eu.boell.org/en/2022/10/18/europe-must-slash-pesticide-use-protect-peoples-and-planets-health> [↑](#footnote-ref-3)
4. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2018). [↑](#footnote-ref-4)
5. Report of the Special Rapporteur on the right to food (2017). [↑](#footnote-ref-5)
6. See also UN Guiding Principles 9. [↑](#footnote-ref-6)