15 February 2023

Committee on the Rights of Child

c/o Office of the High Commission of Human Rights,

United Nations

Palais des Nations,

Geneva, Switzerland

Dear Committee on the Rights of the Child,

**Submission on Draft General Comment on Children’s Rights and the Environment**

We are university scholars that have researched and written on business responsibilities to uphold children’s rights. We welcome the finalization of this General Comment on children’s rights and the environment, and the inclusion therein of paragraphs related to the impacts of business on the enjoyment of those rights.

We thank the Committee for the opportunity make a submission on the draft General Comment on Children’s Rights and the Environment. In particular, we urge the Committee to call greater attention to business’ impacts on children’s rights vis-à-vis the environment and call for the General Comment to elaborate further on *businesses’* responsibilities to protect children’s rights to a clean, healthy environment.

**The need for greater emphasis on business’ responsibilities in protecting children’s rights**

The responsibility to protect and uphold children’s rights falls not only on States, but also on companies and all societal actors. In light of the *UN Guiding Principles on Business and Human Rights* and the broader appreciation of business’ social and environmental responsibilities, we believe this General Comment is an opportunity to highlight business’ responsibilities vis-à-vis climate change and the protection and upholding of children’s rights to a clean, healthy environment, not just States. Climate change and children’s right to a healthy and clean environment are clearly and demonstrably impacted by business activities.

Part V, Section F – titled ‘Children’s Rights and the Business Sector’ and Section D in Part IV: ‘Business and Climate Change’ are welcome inclusions in the General Comment. Nevertheless, more could and should be stated about those business impacts – and the related responsibilities of businesses to address those impacts. Moreover, rather than placing references to business in a Part entitled the ‘General Obligations of States’, these concerns and calls to action should be addressed directly to business themselves.

As stated in the Preamble of the UN General Assembly Resolution on the human right to a clean, healthy and sustainable environment (A/76/L.75), “while the human rights implications of environmental damage are felt by individuals and communities around the world”, children are among the groups that feel the consequences most acutely. This is also true of the impacts of business enterprises on children’s rights in the context of the environment and particularly, climate change. The risks of more severe, longer-term and irreparable harm to children in the context of business activities and decisions is highly likely. Climate change is an existential challenge that we have foist upon the next generation. Some corporate activities worsen the quality of the environment and contribute to global climate change. Patently, and as the General Comment states, children’s rights are severely impacted by these.

Therefore, it is imperative for this General Comment to tackle business involvement in impinging on children’s rights to a clean, healthy and sustainable environment and their potential to help protect and uphold those rights.

**Our recommendations:**

In order to strengthen the General Comment and strengthen the protections of children’s rights, we recommend:

**(1) Invoke the United Nations’ Guiding Principles on Business and Human Rights.**

In Section F, the General Comment explicitly refer to the *United Nations’ Guiding Principles on Business and Human Rights* *(2011)* as the authoritative statement on business’ human rights responsibilities.

The current draft General Comment makes no mention of the *UN Guiding Principles.* This is a missed opportunity to align two important human rights agendas – the advancement of children’s rights and incorporating business into the pursuit of human rights generally. The CRC has, in the past, demonstrated the need for this alignment; most significantly, the finalization of *General Comment No. 16 (2013)* on State obligations regarding the impact of the business sector on children's rights. We encourage the CRC to continue in the same vein in this General Comment as well.

The *UN Guiding Principles*, in Principle 8, call on States to provide guidance to business enterprises on protecting and promoting children’s rights – recognizing ‘the specific challenges that may be faced by … children’ amongst other vulnerable groups. Just as *General Comment No.16* did, this current General Comment on Children’s Rights and the Environment is an opportunity for the United Nation’s CRC Committee to further elaborate on the responsibilities of businesses and to provide further guidance to the corporate sector, just as it asks States to do so. Particularly in sectors where corporate activity has a direct potential adverse impact on the environment (including extractives and mining particularly, but also manufacturing), the corporate duty to *do no harm* should be considered a baseline.

**(2) The General Comment should address businesses directly.**

In the spirit and manner of *General Comment No.16* and the *UN Guiding Principles on Business and Human Rights,* the CRC should address businesses directly and include specific recommendations for the business community to address children’s rights and the protection of the environment and address climate change.

The UN General Assembly Resolution on the human right to a clean, healthy and sustainable environment (A/76/L.75) also addresses businesses directly and calls:

 “uponStates, international organizations, *business enterprises* and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all” (Art. 4) (italics added).

This resolution is recognition that, in addition to the responsibility to prevent harms to children’s rights arising from business practices, businesses have a role to positively engage in the protection and promotion of children’s rights to a clean, healthy environment and to address climate change.

The Committee can also draw inspiration from the Inter-American Court of Human Rights, which in its Advisory Opinion OC 23 – 17 on The Environment and Human Rights not only enumerates State obligations to regulate, supervise and monitor but also addresses business enterprises directly in para. 115 and cites Principles 11 to 15, 17, 18, 22 and 25 of the UNGPs:

“Notwithstanding the State obligation to supervise and monitor activities that could cause significant harm to the environment, the Court takes note that, according to the ‘Guiding Principles on Business and Human Rights,’ business enterprises should respect and protect human rights, and prevent, mitigate and assume responsibility for the adverse human rights impacts of their activities.” (italics added)

Paragraph [92] is the sole paragraph in the draft General Comment that addresses business directly, as distinct from States. It should be expanded and elaborated upon. In the context of the General Comment’s discussion of climate change in Part IV, the recommendations are entirely addressed to States. Adding a paragraph or several directed towards business impacts and responsibilities would be appropriate.

As evidenced by the Business Statement of the International Chamber of Commerce on Accelerating Climate Adaptation for Every Child in response to the UNICEF call to take into account children’s best interests in global climate debates, leading businesses and industry bodies recognize they have responsibilities to protect and advance children’s rights in the context of the climate crisis. This General Comment is an opportunity for the CRC to speak directly to them, clarifying what those responsibilities are.

The *UN Guiding Principles’* core recommendations of how a business can respect human rights include:

1. make public commitments to respect human rights;
2. conduct ongoing human rights due diligence and communicate their findings; and
3. establish human rights grievance mechanisms for impacted people and communities.

This CRC General Comment should reflect this well-established UN framework too. Tangible recommendations addressed directly to the business community the General Comment could include:

* Ensure corporate statements of commitments to human rights explicitly includes children’s rights, including to a healthy and clean environment.
* Ensure corporate human rights due diligence practices include children’s rights, including their right to a healthy and clean environment and make available their due diligence findings transparently to the public, including to children in child-friendly formats.
* Ensure corporate human rights grievance mechanisms are child-friendly, and allow for the participation of children in their processes.
1. **Business impacts on the enjoyment of children’s right to the environment is briefly noted in Section F – but should be elaborated upon.**

It is not merely marketing companies that impact children’s rights and the environment, as per Para. [93]. Moreover, it is not solely these companies that could *positively* impact children’s enjoyment of a healthy environment. Other business sectors, such as the extractives, manufacturing, financial and investment sectors should be explicitly mentioned.

The draft General Comment notes in Para. [15] that the ‘precautionary principle’ is fundamental to the approach to be taken to children’s rights and the environment. Given the business’ sectors role in global climate change and environmental harms (- by extracting, using and burning fossil fuels, for example -), the regulatory obligations of States (incl. vis-a-vis the business sector seems to be lacking in the invocation and discussion of the precautionary principle. Given the exacerbated risk of impact on children, States Parties’ obligation to regulate businesses to prevent children’s rights violations due to environmental harms is heightened in line with this precautionary principle, particularly read together with the principle of best interests of the child. On this point, the Committee can here rely on its own General Comment 16, as well as the UN Guiding Principles.

1. **The General Comment should reiterate that the business community should not neglect children’s rights in the “just transition” to a clean energy future.**

The transition to clean energy should not come through infringing children’s rights. Children’s right to a healthy environment should not be championed as the impetus for a ‘just transition’ that comes about at the hands of under-age, under-paid child labourers in the cobalt mines of the Democratic Republic of Congo and elsewhere. Children have a right to education, and a right to safe workplace environments as well. The Committee should explicitly call for the just transition to be a child-friendly transition that respects and protects children’s rights.

We thank the Committee for the opportunity to make this submission. We hope our recommendations are received well. We stand ready to discuss them with the Committee. We close by once again reiterating our wholehearted support for a General Comment on this topic, and hope that the final version will better reflect business’ impacts and responsibilities with regard to safeguarding children’s rights to a sustainable environment to grow up in.

Yours sincerely,

  

Dr Jonathan Kolieb and Dr Gamze Erdem Türkelli

**About the authors:**

Dr Gamze Erdem Türkelli is an Assistant Research Professor in Public International Law, Human Rights and Sustainable Development at the Law and Development Research Group of the University of Antwerp. Her work is situated at the intersection of human rights, children’s rights, international law and sustainable development. Gamze is the author of *Children’s Rights and Business: Governing Obligations and Responsibility* (CUP 2020) and co-author of *Children’s Rights: A Commentary on the Convention on the Rights of the Child and its Protocols* (Edward Elgar 2019) and *Advanced Introduction to Children’s Rights* (Edward Elgar 2022).

Email: Gamze.erdemturkelli@unantwerpen.be

Dr Jonathan Kolieb is Senior Lecturer in International Law at RMIT University, where he also serves as a leader of the RMIT Business and Human Rights Centre. He has written on a range of topics related to business’ human rights responsibilities, including, children’s rights. Jonathan’s research and involvement in children’s rights goes back over a decade, with a focus on the international legal protections of children during times of armed conflict. Jonathan has served on multiple occasions as a consultant to the United Nations’ Office of the Special Representative of the Secretary-General for Children and Armed Conflict. Jonathan is the author of the sole chapter devoted to children’s rights in the Deva and Birchall’s *Research Handbook on Human Rights and Business.*

Email: Jonathan.kolieb@rmit.edu.au

**Relevant resources:**

* Gamze Erdem Türkelli, *Children's Rights and Business: Governing Obligations and Responsibility*, Cambridge University Press (2020).
* Jonathan Kolieb,'Protecting the Most Vulnerable: Embedding Children's Rights in the Business and Human Rights Project,' in *Research Handbook on Human Rights and Business*, Surya Deva and David Birchall (eds.), Edward Elgar Publishing (2020).