

## **Submission to the Committee on the Rights of the Child**

*15 February 2023*

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) welcomes the opportunity to contribute with comments to the draft General Comment No. 26 on Children's Rights and the Environment with a Special Focus on Climate Change (DGC26) of the Committee on the Rights of the Child (CRC). This landmark legal reference tool will further clarify international human rights obligations derived from the Convention on the Rights of the Child and provide guidance for States and relevant stakeholders on how to address the severe impacts of the climate crisis on children's rights. Once adopted, this DGC26 will serve governments, social movements, experts, and civil society organisations to undertake environmental action aligned with children's rights. Furthermore, it will contribute to and implement the obligations of the climate change regime aiming for a just transition that meets the needs of present and future generations.

In this spirit, this written submission aims to provide observations to the DGC26 aspiring to strengthen the existing language on just transitions and make additional references on critical issues that are central to children's rights approaches to environmental justice, namely:

- The risks and opportunities that the transition to renewable energy represents for the realisation of children's rights; and
- The importance of combating the commercialisation of public services on education and health to respect, protect and realise children's rights.

### **The transition to renewable energy**

The phasing out of fossil fuels and the transition to clean, renewable, and efficient energy technologies are at the core of all efforts to decarbonise our societies and economies and avert the worst effects of the climate emergency. Renewable energy refers to wind, solar, hydro, geothermal and biomass energy resources that provide opportunities to halt greenhouse gas emissions while providing power to conduct most productive human activities, including, among others, industry, transport, agriculture, and housing. The shift away from fossil-fuel-based energy systems and the mainstreaming of renewable energy is underway and increasingly viewed as inevitable considering the risks that climate energy poses to the full range of recognised rights and the conditions that sustain life on the planet. As recognised by the CRC in the DGC26, the multiple and wide-ranging impacts of the climate emergency on the enjoyment of children's rights give rise to State obligations to take action to prevent these foreseeable harms.<sup>1</sup> These measures should include taking consistent, urgent, and significant steps to move forwards with the transition to renewable energy.

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<sup>1</sup> Committee on the Rights of the Child (CRC), Draft General Comment on children's rights and the environment with a special focus on climate change, paras. 98-103.

However, the energy transition—shifting from fossil fuels to renewable energy technologies— will not automatically deliver more equitable and rights-compliant energy systems. Renewable energy, as its fossil-fuel forebearer, has the potential to undermine or hinder children’s rights at each point of their lifecycles, from the extraction of minerals on which renewable energy depends to the construction of the infrastructure for energy generation and the transmission and distribution for energy uses.<sup>2</sup> Large-scale renewable energy projects have already replicated harmful extractive practices that amount to human rights abuses, such as land dispossession, violations to the right to free, prior and informed consent, and the replication of harmful gender- stereotyping that limit the participation of women in the energy sector.<sup>3</sup>

To avoid the transition to renewable energy replicating or exacerbating pre-existing inequalities or generating new human rights concerns, States and other key stakeholders driving this transformation should be guided by human rights norms and principles. In this light, the Convention on the Rights of the Child provides the necessary standards to conduct this process, ensuring children's rights are centred on developing a new global energy system capable of delivering sustainable, safe, available, and accessible energy for all. This is central to delivering a just transition that respects, protects, and realises rights within the boundaries of our planet.

In this line, the GI-ESCR recommends the following edits and modifications to the DGC26:

- We propose to include "sustainable energy" in paragraph 29 to reflect that low-carbon energy systems and technologies are necessary to create conditions in which children can lead healthy lives. This is particularly true for households that suffer from energy poverty and use firewood, coal, and other forms of biomass for cooking, heating, and lighting, which pose health risks to children due to indoor air pollution, especially girls, who tend to perform a disproportionate

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<sup>2</sup> Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), “Renewable Energy and Gender Justice”, pag. 5, last accessed 13 February 2023, available at: <https://static1.squarespace.com/static/5a6e0958f6576ebde0e78c18/t/5fdc89224ef20e41a29d3390/1608288572840/2020-Briefing-paper-renewable-energy-and-gender-justice.pdf>

<sup>3</sup> Business and Human Rights Resource Centre (BHRC), Renewable Energy and Human Rights Benchmark: Key Findings form the Wind and Solar Sectors, last accessed on 13 February 2023, available at: [https://media.business-humanrights.org/media/documents/files/Renewable\\_Energy\\_Benchmark\\_Key\\_Findings\\_Report.pdf](https://media.business-humanrights.org/media/documents/files/Renewable_Energy_Benchmark_Key_Findings_Report.pdf); GI-ESCR, Women’s participation in the energy transition, last accessed 23 February 2023, available at: <https://www.gi-escr.org/publications/towards-a-gender-just-transition-a-human-rights-approach-to-womens-participation-in-the-energy-transition>

amount of care and domestic work in households and communities. In this regard, we propose that the sentence in paragraph 29 be worded as follows:

“Health protection also applies to the conditions in which children can lead a healthy life, such as the provision of safe and clean drinking water and sanitation, **sustainable energy**, adequate housing, access to nutritionally adequate and safe food, and healthy working conditions.”

- In the same line, in paragraph 36, we suggest specifying that education facilities should have, among other things, sustainable heating and cooling systems as a means to provide physically safe, healthy, and resilient infrastructure for effective learning. Heating and cooling systems are critical to provide adequate learning conditions, especially in geographies prone to extreme weather events.

“[...] the construction of buildings and classrooms with adequate, **sustainable** heating and cooling **systems**, access to sufficient, safe, and acceptable drinking water and sanitation facilities, especially for girls”.

- We suggest including "production" and "distribution" before the word "use" to adequately reflect the energy cycle in paragraph 40:

“The Committee underlines that the rights to adequate housing, food, water and sanitation should be realised sustainably, including with respect to material consumption, resource and energy **production, distribution**, and use, and appropriation of space and nature.”

- To highlight the window of opportunity that exists to undertake significant action and advert the climate emergency, we suggest including the word “as a priority” in paragraph 73 (d) so it reads:

(a) “Phase out the use of coal, oil and natural gas **as a priority** by investing in renewable energy, energy storage and energy efficiency to address the climate crisis.”

- Environmental and climate-related actions, such as renewable energy projects and policies, should conduct children’s rights impact assessments to identify and address potential risks. These assessments should consider, among other things, the ‘cumulative impacts’ resulting from a series of measures and/or projects on a given territory and specific groups of children. Assessing the cumulative impacts of environmental measures is essential as these evaluations are often only centred on a particular measure/ project, limiting the

documentation of risks derived from systemic issues. For instance, in regions where rare transition minerals (lithium, cobalt, copper, etc.) are found, social and environmental impacts should not only be assessed by looking at each mining project, but also through an analysis of the overall effects of mining projects conducted in the area to document harmful systemic patterns of human rights abuses. In this sense, we propose that paragraph 88 be modified as follows:

“Child rights impact assessments should have special regard for the differential impact of environmental and climate-related actions on children, especially the groups of children most at risk, necessarily including young children, as measured against all relevant rights under the Convention. This includes long-term impacts, interactive impacts, **cumulative impacts**, and impacts on the different stages of childhood. For example, States that have substantial fossil fuel industries should assess and address the social and economic impact on children of their strategies for a just transition.”

- In the same line as the previous suggestion, we are of the view that children’s impact assessment should adopt an intersectional gender perspective to consider the gender-differentiated impacts of environmental and climate-related actions. Thus, we recommend considering adding the following modification to this paragraph, so it reads:

“Child rights impact assessments should be undertaken as early as possible in the decision-making process, **adopt an intersectional gender perspective**, include the views of children and experts working at the interface of children’s rights and the environment and make recommendations for alternatives and improvements.”

- We welcome and support the reference in paragraph 117, recognising that State agencies should lead by example in the transition towards sustainability. Public entities should ensure that they invest in and promote zero-carbon technologies and that public finances are not directed towards expanding polluting activities. We suggest this language is kept on the final version of the General Comment.
- Additionally, in paragraph 117, we recommend replacing the reference to ‘public-private partnerships’. Several civil society organisations, human rights mechanisms and experts have raised human rights concerns about the promotion of public-private partnerships in critical sectors and public services necessary for the realisation of rights, such as in education, health, water, and

energy.<sup>4</sup> Therefore, we suggest that the adopted General Comment promotes measures that enhance access to sustainable energy by diversifying the ownership, management, and transmission of energy to allow for alternative public and community-led institutional arrangements. In this sense, we recommend the following edits:

“States can also encourage the **diversification in the ownership, management, transmission, and consumption of energy, with democratic, public and cooperative means of generation and distribution** assuming a more central role to increase access and availability of renewable technology and the provision of sustainable energy products and services, particularly at the community level and for **the most marginalised.**”

- Finally, we suggest that the CRC includes a reference in the DGC26 that recognises the impacts of environmental breakdown on care systems. As health risks will increase with the escalation of the planetary crisis, these will translate into heightened care burdens for families and communities, specifically affecting women and girls who perform the bulk of this work worldwide. The proposal would be to include the following reference in paragraph 30:

“Priority concerns and emerging environmental health issues should be identified, **including rising care and domestic work burdens that may disproportionately fall on girls due to heightened health risks suffered by family and community members impacted by environmental harm.**”

### **The commercialisation of Public Services**

To ensure children's economic, social, and cultural rights amidst climate change and broader planetary emergencies, States must ensure properly funded and quality public services. Among the principles that underpin quality public services, there is the requirement that these should be accessible to all, adaptable, responsive, participatory, transparent, accountable, and transformative to those they serve.<sup>5</sup> Moreover, States

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<sup>4</sup> Eurodad, History RePPeated II -Why Public-Private Partnerships are not the solution (2022), last accessed 23 February 2023, available at: <https://www.eurodad.org/historyrepppeated2> ; UN Special Rapporteur on extreme poverty and human rights, Report on Privatization and Human Rights, A/73/396, last accessed 13 de February 2023, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/299/45/PDF/N1829945.pdf?OpenElement>

<sup>5</sup> Principles of Human Rights in Fiscal Policy (2022), available at: [https://www.cesr.org/sites/default/files/2021/Principles\\_for\\_Human\\_Rights\\_in\\_Fiscal\\_Policy-ENG-VF-1.pdf](https://www.cesr.org/sites/default/files/2021/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf)

should allocate the maximum available resources to realising economic, social, and cultural rights for all, particularly in emergencies.

In recent decades, many States have taken steps to commercialise public services and associated resources.<sup>6</sup> This is an alarming issue as it raises many human rights concerns. Over recent years, a range of human rights monitoring bodies has exposed the human rights violations resulting from private actors' involvement in public services.<sup>7</sup> Concerns include increased inequalities and segregation, low quality in the provision of services, reinforcement of unbalanced power relations, and diminished democratic control in areas essential for human dignity.

Commercialising public services often concurs with increased corporate capture of public decision-making. On the one hand, commercialisation has opened the governance of services, such as education, to powerful multinational corporations that increasingly influence sectors critical for functioning democracies, such as education curricula. On the other hand, the private sector's presence at the heart of social services has influenced policymaking in ways that advantage corporations. This is done typically by favouring public-private partnerships (PPPs)<sup>8</sup> that transfer funds from the public to private actors despite clear evidence of their ineffectiveness and human rights abuses,

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<sup>6</sup> For instance, GI-ESCR has supported partners in [Senegal](#), [Côte d'Ivoire](#) and Liberia (report will be published soon) to lead research on the impact of the growing commercialization of education in their own countries. With the support of transparency and anti-corruption specialists, GI-ESCR has also documented and monitored the [role of the private sector in addressing transparency challenges in education](#), focusing on domestic experiences in Kenya and Liberia. GI-ESCR has also documented the right-to-health impacts of the commercialisation of healthcare services in [Kenya](#), [Nigeria](#) and [Italy](#) during the COVID-19 pandemic.

<sup>7</sup> GI-ESCR, States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework (2020). <https://www.gi-escr.org/publications/states-human-rights-obligations-regarding-public-services-the-united-nations-normative-framework#:~:text=They%20must%20adopt%20a%20rights,universal%20access%20and%20universal%20coverage>.

<sup>8</sup> For instance, in 2022, GI-ESCR contributed to the publication of the report entitled "History RePPeated II: Why public-private partnerships are not the solution". The report features seven in-depth investigations into PPPs across a range of sectors, from healthcare and education to roads and water supplies, in Liberia, Scotland, Spain, India, Mexico, Peru and Nepal. The case studies are written by experts working in each region, including GI-ESCR, who contributed to research on the state of Education in Liberia. The report found that all the projects investigated came at a high cost for the public purse and posed an excessive risk for the public sector. They resulted in a questionable diversion of public funds, particularly during the COVID-19 crisis in most cases. Overall, all of the PPPs investigated lacked transparency and/or failed to consult with affected communities.

including precarious labour conditions, issues of transparency, accountability, and meaningful engagement with stakeholders, among others.<sup>9</sup>

As evidenced by the COVID-19 pandemic, these challenges are exacerbated by crises. The effects have once again revealed that market-based public services, such as education, are unsustainable, especially in times of crisis. For instance, during the COVID-19 pandemic, the widespread closure of private schools and private education companies undergoing bailout plans left millions of children without a school, deepening structural inequalities in access to education with specific implications for girls and young women.<sup>10</sup> The impact of crises and the ones to come due to climate change will apply to education and all public services overall.

As regards the right to health, environmental harm can have devastating effects on its enjoyment.<sup>11</sup> What is less studied is that overreliance on commercial actors in healthcare constitutes a barrier to accessing healthcare services in many countries, including when it comes to prevent the harms of environmental damage on children and for diseases associated with ecological disruption. GI-ESCR's reports on access to healthcare services in urban informal settlements of Kenya<sup>12</sup> and Nigeria<sup>13</sup> evidenced that, during COVID-19, the right to health was endangered when States excessively relied on for-profit actors to deliver healthcare services, due to increased inequality in accessing these services, especially when it comes to populations at risk of marginalisation like children. In urban informal settlements, poor environmental conditions impinge on the underlying determinants of the right to health, resulting in increased risks for infections stemming from lack of clean and potable water, adequate food, and exposure to dumps. The incidence of diseases associated with these

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<sup>9</sup>Eurodadd, History RePPeated: How Public Private Partnerships are failing (2018), available at: [https://assets.nationbuilder.com/eurodad/pages/508/attachments/original/1590679608/How\\_Public\\_Private\\_Partnerships\\_are\\_failing.pdf?1590679608](https://assets.nationbuilder.com/eurodad/pages/508/attachments/original/1590679608/How_Public_Private_Partnerships_are_failing.pdf?1590679608).

<sup>10</sup> See for example Re-building resilient education systems: three lessons on the privatisation of education emerging from the COVID-19 pandemic (2020), available at: <https://www.gi-escr.org/covid-19-blog-all-posts/re-building-resilient-education-systems-three-lessons-on-the-privatisation-of-education-emerging-from-the-covid-19-pandemic>; GI-ESCR's Executive Director discusses the impact of COVID-19 in the leading Spanish language newspaper El País (2020), available at: <https://www.gi-escr.org/latest-news/gi-escrs-magdalena-seplveda-discusses-the-impact-of-covid-19-in-the-leading-spanish-language-newspaper-el-pas>; Pfunye, A. and Ademola-Popoola, I. The effects of the COVID-19 pandemic on girls' education (2021), available at: <https://www.globalpartnership.org/blog/effects-covid-pandemic-girls-education>

<sup>11</sup> Vicente Silva Dider, (2021) The Climate Emergency is a Human Rights Issue, Health and Human Rights Journal, <https://www.hhrjournal.org/2021/12/the-climate-emergency-is-a-human-rights-issue/>

<sup>12</sup> GI-ESCR, 'Patients or Customers? The impact of Commercialised Healthcare on the Right to Health in Kenya during the COVID-19 pandemic (2021) DOI: 10.53110/RPCN4627.

<sup>13</sup> GI-ESCR and Justice & Empowerment Initiative (2022) 'The failure of commercialised healthcare in Nigeria during the COVID-19 pandemic. Discrimination and inequality in the enjoyment of the right to health. DOI: 10.53110/ZYQT7031.



conditions, including respiratory diseases, is aggravated by lack of access to public healthcare services and prevention.<sup>14</sup>

In Italy, reliance on for-profit healthcare provision led to the neglect of relatively less remunerative sectors, such as family medicine and prevention, that are crucial allies when it comes to protect populations' health, including in the case of diseases caused by exposure to poor environmental conditions.<sup>15</sup> Additionally, private for-profit insurance companies can create barriers and discrimination when accessing healthcare insurance in social healthcare insurance systems.<sup>16</sup> This trend has also been highlighted by Oxfam International<sup>17</sup> and Hakijami.<sup>18</sup>

Furthermore, United Nations Human Rights Bodies and Mechanisms have raised over the years concerns, on the privatisation of healthcare services, as they can undermine equal access to healthcare services, negatively impact the enjoyment of the right to health, and underlined that private actors have to be monitored and regulated strictly by the state.<sup>19</sup>

In this context, the GI-ESCR recommends the following edits and modifications to the DGC26:

- As explained in paragraph 31, the right to education is highly vulnerable to the impact of environmental harm. As illustrated in the introduction of this section, an increased commercialisation of public services exacerbates this vulnerability. We, therefore, stress the importance of ensuring resilient public education systems that meet human rights standards and invite the CRC to add the following at the end of paragraph 31 of the DGC26:

"Education is one of the cornerstones of a child rights-based approach to the environment. Children highlighted that education is instrumental in protecting children's rights and

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<sup>14</sup> Ibidem

<sup>15</sup> GI-ESCR, 'Italy's Experience during COVID-19: the Limits of Privatisation in Healthcare [Policy Brief]' (2 June 2021) available at: <https://static1.squarespace.com/static/5a6e0958f6576ebde0e78c18/t/60b78462b0e35034a1394630/1622639715294/2021-05-Policy-brief-italy-during-COVID-19-healthcare-privatisation.pdf>.

<sup>16</sup> See note 8-10.

<sup>17</sup> Anna Marriott, 'Blind Optimism: Challenging the Myths about Private Health Care in Poor Countries' Oxfam (1 February 2009).

<sup>18</sup> Economic and Social Rights Centre – Hakijami and the Centre for Human Rights and Global Justice, 'Wrong Prescriptions: the Impact of Privatising Healthcare in Kenya' (17 November 2021) [https://chrgj.org/wp-content/uploads/2021/11/Report\\_Wrong-Prescription\\_Eng\\_.pdf](https://chrgj.org/wp-content/uploads/2021/11/Report_Wrong-Prescription_Eng_.pdf) accessed 13 January 2022; People's Health Movement (PHM) and Regional Network for Equity in Health in East and Southern Africa (EQUINET), 'Report of the East and Southern Africa Regional People's Health University' (2021) accessed 14 January 2022

<sup>19</sup> GI-ESCR, 'Compendium of United Nations Human Rights Treaty Bodies' Statements on Private Actors in Healthcare' (June 2021), last accessed 25 February 2022.



the environment and in increasing their awareness and preparedness for environmental damage, while the right to education is highly vulnerable to the impact of environmental harm, described by children as school closures and disruptions, dropouts from school, and destruction of schools and places to play. **In this regard, ensuring well-funded, resilient, inclusive, free, quality public education systems that meet human rights standards is crucial.**"

- As evidenced before, the commercialisation of public healthcare services endangers the universal enjoyment of the right to health, resulting in discrimination of marginalised populations, such as children living in informal urban settlements. This negatively affects the prevention, treatment and rehabilitation of diseases caused by exposure to poor environmental conditions and those resulting from global warming, biodiversity loss and environmental damage. In this regard, we suggest the following additions to paragraph 29 of the DGC26:

"The right to health includes the access of children affected by environmental harm to functioning public health and **public** health-care facilities, goods and services, and particular attention should be given to underserved and hard-to-reach populations and to delivering appropriate pre-natal maternal health care, **including through dedicated public services. Public and private** facilities, programmes and services should be equipped to respond to environmental health hazards. Health protection also applies to the conditions in which children can lead a healthy life, such as the provision of safe and clean drinking water and sanitation, adequate housing, access to nutritionally adequate and safe food, and healthy working conditions. **Everyone should be granted access to universal, well-organised public healthcare services. Private healthcare services should be strictly monitored and regulated.**"

For more information, please consult the following publications of the Global Initiative for Economic, Social and Cultural Rights:

- [\*Renewable Energy and Gender Justice\*](#) (2020).
- [\*Women's Participation in the Energy Transition: A Human Rights Perspective\*](#) (2021).

- [\*Using Economic, Social, Cultural and Environmental Rights as Guiding Tools for a Gender-Just Transition\*](#) (2022).
- [\*Loss and damage – the missing piece: International tax cooperation for new climate finance\*](#) (2022).
- [\*The Future is Public: Global Manifesto for Public Services\*](#) (2021)
- [\*Santiago Declaration\*](#) (2022)
- [\*States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework\*](#) (2020).
- [\*States' Human Rights Obligations regarding public services essential for the enjoyment of Economic, Social and Cultural Rights – The regional perspective\*](#) (2022).
- [\*Ensuring public services for indigenous peoples: human rights standards\*](#) (2022).
- [\*Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education\*](#) (2019).
- [\*L'impact de la privatisation et de la marchandisation de l'éducation sur le droit à l'éducation en Côte d'Ivoire au regard des principes d'Abidjan\*](#) (2022).
- [\*Privatisation et marchandisation de l'éducation au Sénégal\*](#) (2022).
- [\*Transparency of private commercial education providers: A case study of Bridge International Academies\*](#) (2022).
- [\*History RePPPeated: How Public Private Partnerships are failing\*](#) (2018).
- [\*History RePPPeated II: Why public-private partnerships are not the solution\*](#) (2022).
- [\*Italy's Experience during COVID-19: the Limits of Privatisation in Healthcare\*](#) (2021).
- [\*The failure of commercialised healthcare in Nigeria during the COVID-19 pandemic. Discrimination and inequality in the enjoyment of the right to health\*](#) (2022).
- [\*Patients or Customers? The impact of Commercialised Healthcare on the Right to Health in Kenya during the COVID-19 pandemic\*](#) (2022).

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