**Reflections On The Zero Draft of the *General Comment On Children's Rights And The Environment With A Special Focus On Climate Change***

The GNHRE’s Children’s Rights Research Group[[1]](#footnote-1) respectfully presents comments on the zero draft of the General Comment on children’s rights and the environment with a special focus on climate change.

# **Introduction**

The GNHRE welcomes the impressive scope and reach of the Zero Draft of the General Comment (GC), which uniquely connects the fields of human rights, children rights, and environmental protection. In particular, the GNHRE praises the language used throughout, which changes the narrative from children as victims to children as ‘agents of change.’ Further, the Committee bridged the gap between human rights and the environment, effectively uniting the fields under the GC. This is a welcome development in light of the adoption of the 2021 resolution 48/L23/Rev1 of the UN Human Rights Council (UNHRC) and the 2022 resolution A/RES/76/300 of the UN General Assembly (UNGA). The GNHRE has identified a number of areas where these links can be developed or clarified.

# **Key Concepts**

In recognising the relationship between environmental harm and children’s rights, the GNHRE welcomes the ‘all rights’ approach that the draft GC adopts (paragraph 6). Nevertheless, we highlight three issues which we believe require further expansion and clarification, *inter alia*:

1. In its present form, the GC does not fully address the earth’s health as an important facet of the right of children to a healthy environment. Further, it focuses primarily on environmental harm, especially in the context of climate change. While climate change is ubiquitous and insidious, and is a crucially important threat, the GC fails to sufficiently emphasize other environmental threats important to children’s environment, such as the cumulative pressures across climate change, biodiversity loss, and toxic pollution. The linkages between them are critical, and connected to all stages of childhood development(paragraphs 20, 26, 53, 54, 55). The right to a healthy environment recognised by the UNGA is not just a right to an absence of a harmful environment. It extends beyond the avoidance of harm to the protection and regeneration of the environment and the recognition of its value and importance beyond its service to humans.

Throughout the GC the emphasis is on the environment as constituted by different component parts (air, water, green areas, etc) (paragraph 71). While it is useful to think about different aspects of the environment, and how these impact children’s rights and their need to be protected, we would suggest greater reference to the environment as a single interconnected system, and as a shared transnational concern. This is especially important in the context of climate change which affects the environment in its interconnected whole, and where causes and impacts of harm are not limited to certain areas or jurisdictions.

1. The GC notes that “The application of a child rights-based approach in the environmental context requires the full consideration of all children’s rights” under the UNCRC (paragraph 6). However, in the following paragraphs there is little attempt to define what a child rights-based approach is nor what a youth rights-based approach might be.
2. Part C of the GC identifies three important objectives. While these are pertinent and fitting, we believe an objective of ensuring children are heard and can actively and effectively participate in decision-making, and in the interpretation and realisation of children’s rights to a clean, healthy and sustainable environment, should be added to this list. Furthermore, the first objective focuses on “the adverse effects of environmental harm and climate change on children” but makes no mention of the causes or perpetrators of that harm. The importance of accountability is largely overlooked in the GC and we believe that this should be a part of a child rights-based approach to the environment and that environmental and climate justice should be a GC objective.

### **2.1.2. Sustainable Development**

Sustainable development is a concept that would benefit from an interpretation *through* a child rights lens, which demands a shift in the balance between economic, social and environmental interests, determining priorities between these interests in the best interests of the child. In addition, we believe a children’s rights focus presents an opportunity to consider what sustainable development might mean in light of the right of children to “physical, mental, spiritual, moral, psychological and social development.” For example, paragraphs 40 and 43 could benefit from a clearer understanding of what the concepts of “sustainable” and “development” mean for child’s rights specifically in the context of the right to adequate housing, food, water and sanitation (paragraph 40), and the protection against forced evictions without prior provision of alternative accommodation (paragraph 43).

### **2.1.3. Future Generations**

The GC does not provide any definition of the concept of future generations or of the relationship of future generations to children and the youth (see paragraph 13). While beyond the scope of the GC, it may nevertheless be valuable to draw on and reference important considerations and sources of law and authority in understanding our obligations to future generations. For example, the GC could refer to the Kari-Oca Declaration and Indigenous Peoples’ Earth Charter which recognises that ancestors and future generations can help us and that caring for future generations includes looking to the past “Indigenous peoples walk to the future in the footprints of our ancestors.”

The Committee could also draw on the draft legal expert opinion that will form the basis of the Maastricht Principles on the Human Rights of Future Generations, currently under development.

### **2.1.4. Best Available Science**

Wherever “science” is mentioned in the GC – i.e., paragraph 28, 33, 78, 102, 110, it does so in relation to the premise that science should be utilized for climate action, rather than underscoring what children can and are contributing to the field of climate science. This reinforces the lens of “vulnerability” of the children and outweighs the “contributory-position” they build for the global socio-legal, political commitment for climate action.

Similarly, while the GC mentions technology in paragraphs 84, 113, and 117, it does so through the lens of how “adults” or States can aid climate action through technology that will benefit children but does not engage with how children can contribute. Cooperation between states and other stakeholders, both in North-South but also South-South, is essential to fully fulfil this approach. This includes not only relying on “traditional” science but also on Indigenous knowledge.

### **2.1.5.** **Concepts of Justice and Intersectionality and Other Children Disproportionately Affected (Children in Especially Vulnerable Contexts, Poverty, Girls and Other Gender-diverse Children, Peasant Children, Etc)**

While the GC points to a “link” between environmental harm and issues like poverty, we believe the document lacks proper discussion and clarification on the nature and extent of this “link” and how pre-existing inequalities amount to differentiated impacts of environmental harm and climate change on marginalized groups. For example, paragraph 8 mentions that particular groups are adversely affected due to the interconnection of environmental harms and inequality, but there is no reference to the situatedness of girls in this context. Furthermore, the phrasing in paragraph 38 regarding gender should be reconsidered, to ensure the link is clear.

While all children are vulnerable, an additional burden falls on children who find themselves in socially and economically disadvantaged situations. Disparities due to gender, race, and disability become especially widened. Environmental harms such as sea level rise and subsidence, salt-water intrusion and storms, which may result from climate change, can have combined effects which severely threaten many developing states, including small island developing states.

Likewise, paragraph 43 should pay particular attention to the importance of traditional land to Indigenous children, the impact of relocation on their cultural practices, and the quality of the natural environment for the enjoyment of their rights to an adequate standard of living and culture. Moreover, while paragraph 49 identifies Indigenous children as a disproportionately affected category, more could be said about their specific needs, rights and the obligation of States to respect them and facilitate their development. In particular, the right to culture and the risk posed by climate change should be mentioned and considered.

While paragraphs 50 and 51 discuss the right to non-discrimination and list groups experiencing heightened barriers to the rights, there is no real engagement with other categories of children disproportionately affected. Furthermore, there is no discussion regarding the differentiated experiences, needs, ideologies of the environment among these groups, or evidence of consultation with them. For example, we haven’t found any evidence in the zero draft that the Committee has engaged with Indigenous children in drafting this comment. Overall, there is a general lack of differentiation between forms of ulterior vulnerability among children.

Furthermore, paragraph 109 of the zero draft, refers to “tipping points” (thresholds beyond which certain impacts can no longer be avoided) as creating “greater risks in relation to children’s rights and climate change,” for example, threats posed to children by climate-related displacement, which lead to climate refugeeism, and orphans, which can cause impacts on children’s education and cultural rights as outlined in the *Torres Strait Islanders* decision by the UN Human Rights Committee.

Importantly, the GC provides an opportunity to engage with the debate on loss and damage within the context of climate change, which has now gained increasing currency internationally, with the COP27 Decision -/CP.27 -/CMA.4. Children in an overwhelming majority of the states most affected by climate change and loss and damage are found in Asia, Africa, Latin America, the Caribbean and South Pacific, and are heavily reliant on their coastal marine environment, but impacted by frequent and fierce storms [in the Pacific and Atlantic], sea-level rise and subsidence, and saltwater intrusion. These climate related impacts raise issues of loss and damage, which has been an ongoing issue of intra- and inter-generational equity for small island developing states. Additionally, for developing states – especially small island developing states – an overall issue is climate justice in regard to debt and other financial reparations which are faced by many Global South states. The predominant majority of the Global South are formerly colonised (or still colonised) states, which adds another critical dimension for children’s rights, as these states are already in vulnerable contexts.

We would suggest that greater attention should be given to the disparities distinguishing children in especially vulnerable conditions, including intersecting factors such as stages of economic development, race, ethnicity, gender, disabilities, as well as children in conflict contexts (Section 2.2.2), areas impacted by the effects of conflicts, or permanently displaced contexts.

**2.2 Particularities of the Connection Between Children’s Rights and a Healthy Environment**

### **2.2.1. Migration and Refugee Children Displacement**

There is an overall recognition in the draft GC that children displaced by climate-induced and environmental factors in a humanitarian crisis are at risk to not even have their basic social and economic rights met (including the rights to housing, food, water, and sanitation) due to the risk of discrimination. This is noted in paragraphs 50-52, 106. Paragraph 50 states the issue of migration and refugee crisis that children face due to climate change, but it should be extended to other aspects like the right to survival and development (paragraphs 18-22) or right to the highest attainable standard of health (paragraphs 23-30). Furthermore, the state of children who are currently migrants, refugees or internally displaced due to climate change need to be considered, specifically as it relates to problems of statelessness, abuse, and isolation.

### **2.2.2. Armed Conflict–Induced Environmental Degradation and Children (Not Present in the Draft At All)**

The GC currently lacks focus on the link between international and non-international armed conflicts and environmental degradation, and the effects these have on children, and we suggest a section to be added on this topic.

War has high costs for all parties involved, but particularly children and future generations. This is true especially from an environmental point of view. Armed conflicts have a devastating impact on the environment. The United Nations Environment Programme (UNEP) has assessed the direct and indirect long-term impacts caused to the natural environment by armed conflicts (e.g. Afghanistan, Côte d’Ivoire, Sudan and the Gaza Strip). Children are the most affected among the victims of war, and the environmental effects of international and non-international armed conflicts weigh heavier on children from every point of view.

While recognising the impressive work that the Committee has done on the theme of the protection of children from hostilities and on the subsequent topic of forced displacement, the GC does not sufficiently address armed conflict-induced environmental degradation and its impact on children. The existing legal framework does not adequately consider the specific environmental impact that armed conflicts have on children and, as a result, this is a crucial issue that merits attention in the GC.

### 2.2.3. **Business and Children Rights**

The zero draft includes a Section on the ever increasing interface between business, international investment and human rights law, which is linked to environmental and social governance, and how businesses operate locally and extraterritorially.

The link between business and children’s rights is multi-faceted. It includes the accountability and responsibility of business for climate change and environmental harm, but also issues related to child labour. This is illustrated by ILO case studies in the environmental sector including fisheries, agriculture, and mining, and the problem of modern slavery which is increasing across sectors, including environmental industries.

The GC highlights the need for linkages between businesses and climate change (paragraph 114), and underscores that businesses have responsibilities to “respect children’s rights and remedy violations of their rights in relation to the environment” (paragraph 90). We believe that more emphasis should be placed on the roles and responsibilities of businesses in addressing environmental and human rights harms (paragraphs 90-93). This will bring the Draft into alignment with the emphasis placed in UNGA A/76/238 underscoring the need for human rights rights compatible with international investment agreements and the United Nations Guiding Principles on Business and Human Rights (UNGPs), which highlights the human rights of children in the Commentary of Principle 3 (state regulatory practice and functions) and Principle 13 (responsibility to respect internationally recognised human rights). This is mirrored in regional instruments in the European Union and Latin America & the Caribbean that will have implications for the “extraterritorial activities and operations [of business enterprises], provided that there is a reasonable link between the State and the conduct concerned” (para 68) (the EU Draft Directive on Corporate Sustainability Due Diligence, the Escazú Agreement and recent decisions of the Inter-American Court in the *Case of the Miskito Divers* (*Lemoth Morris et. al v Honduras*), and in *Vera Rojas and Others v Chile* (where at paragraph 76, the Court specifically mentions that in “its interpretational jurisdiction the text of the [CRC] … necessitates the adoption of special protection measures … [which] was particularly important for children with disabilities.”

### **2.2.4. Oceans & Children**

The global ocean is an essential but little-understood component of the interdependency between climate change, other threats to the ocean space (UNGA Res 77/248, Preambular paragraph 16) and human rights. Additionally, ocean and coastal areas are of fundamental importance for the large majority of the world’s children as a source of nutritious food, income, inspiration, and often, part of their culture and identity. After over a decade of international efforts to include the ocean in international discussions on climate change, it has finally been included by, *inter alia*, reference to ‘ocean-based action’ in the 2022 *Ocean & Climate Change Dialogue* and a series of COP outcomes, including the Chile Madrid Time for Action, and the further developments in the Glasgow Climate Pact and the Sharm El Sheik Implementation Plan.

The ocean-climate change nexus is however not explicitly mentioned in the GC. This gap needs to be filled in light of the increasing recognition of the ocean-climate nexus internationally, both within the UN Framework Convention on Climate Change, and the work of the UN Special Rapporteur on Climate Change and Human Rights (A/77/226, paragraph 92 (f)). Additionally, while the GC in paragraph 121 refers to the “global finance gap,” this has to be counterbalanced with recent OECD findings that SDG 14 is the least funded of the SDGs. This gap directly impacts vulnerable groups, including children, who rely on blue assets and ecosystem services impacted by threats to the ocean-climate nexus, especially in large ocean states with extensive exclusive economic zones, including many small island developing states (SIDS), least developed countries (LCDs) and other developing states.

## **2.3. Cross-cutting Issues To Children’s Rights In The Context Of A Healthy Environment**

### **2.3.1. Issues of Participation, Exclusion And The Right To Be Heard**

The right to a healthy environment and the right to be heard are closely connected. Ensuring sound environmental decision-making depends on the protection of participatory and procedural rights for those affected by the decisions. As a result, we would welcome more detailed discussion of the connection between these rights from a children’s rights point of view, as well as guidelines on how children’s right to be heard in regard to climate change ought to be realised. For example, States should be encouraged to use good models of ensuring children’s participation, such as those provided by citizen assemblies, including youth assemblies at the national, regional and international level. The outcomes of their dialogues and recommendations should feed directly into the legislative amendments and discourse.

The GC recognises the importance of the right of children to be heard at paragraphs 12-13, where it emphasises the need to deepen linkages to intergenerational equity, and potential avenues for climate justice. Further, the GC recognises that children are having their say - through protest, litigation, activism and other means - even when they are not given the opportunity to speak by decision-makers. In recognising children and youth as agents of change, the GC provides support for a broad range of processes through which children can be heard. Globally, there has been a substantial increase in children human rights defenders (CHRDs), as well as climate and ocean defenders, as children comprise the litigants in one-quarter of climate suits instituted to date.

Indigenous children’s rights to be heard deserve special attention and mention. The rights of Indigenous children to be heard in relation to climate change and environmental rights are recognised both in the UNCRC and in the UN Declaration on the Rights of Indigenous Peoples and realising their rights demands that these documents are interpreted together. In addition, Indigenous children’s rights (both their rights to be heard and their environmental rights) need to be understood in light of relevant Indigenous law and custom and consider Indigenous practices of intergenerational learning, teaching and speaking.

In addition to the GC’s recognition of children as agents of change, we suggest mentioning children’s unique contributions and creativity through art, dance, music and literature and recognize their contributions in bringing soft power to work in the climate arena. Their engagement in social media as climate activism and free speech needs to be recognized and protected. Additionally, paragraph 61 is the only place where political engagement of children is, as such, noted. More could be said about children’s political activity. Children's engagement with politics has reinvigorated climate governance in local, national and international levels, however this has left them more vulnerable to political violence and attack. We suggest that the GC (paragraph 66) include State obligations to protect any child human rights defenders, or climate activists in their capacity as political actors.

Last, we believe that the GC would do well to refer to the Global Stocktake (GST) with a particular emphasis on children’s contribution to mitigation, adaptation, and means of implementation and support. These are three thematic areas where the GST facilitates the assessment of global collective progress. Considering that the first GST will run from 2021 to 2023 and will be repeated every 5 years thereafter - incorporating the concept of intergenerational equity - noting how children and youth are actively collaborating in ratcheting up the climate ambition, is important.

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