**The Written Submission on the Draft General Comment No. 26 on Children’s Rights and the Environment with a Special Focus on Climate Change**

**Indigenous Children and the right to health**

Prepared by Natia Kantaria and Yadira Guzman graduate students of the Human Rights Program, the joint program of Humphrey School of Public Affairs and College of Liberal Arts at the University of Minnesota with the guidance of Dr. Diana Quintero Visiting Human Rights Engaged Scholar at the University of Minnesota.

**Introduction**

The written submission assesses Draft General Comment No. 26 with a focus on the right to health of indigenous children. It analyzes if the document considers challenges faced by indigenous children with the help of International Human Rights Law and relevant scholarly work and studies how the Draft General Comment depicts the topics prioritized by children during consultations. The observations may not exhaust the findings related to the right to health of indigenous children, however, will bring suggestions having in mind gender and intersectionality lenses.

In 2022 devastating events showed that climate change is not a challenge of the future but happening today, impacting the most vulnerable communities, including children. The General Comment on Children’s Rights and the Environment can be a feasible instrument to protect children from climate change impact. We would like to come up with specific suggestions to highlight the United Nations Sustainable Development Goal’s message “leave no one behind”.

To present the complexity of the right to health while assessing the document from the intersectional perspective the written submission refers to the Special Protection Measures such as Articles 2, 3, 6 24, 26, and 27 of the UN Convention on the Rights of the Child (UNCRC), Articles 1, 3 and 7 of the Universal Declaration of Human Rights (UDHR) and Article 12 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), Articles 21, 22, 23, 24, 25, 26, 30 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Articles 2, 12, 14(2)(b), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

In recognition of the grave harm that climate change has on children, specifically indigenous children, we encourage the committee to consider the suggested recommendations to incorporate into General Comment No. 26 on Children’s Rights and the Environment with a Special Focus on Climate Change.

**Possible gaps related to the consultations with children**

We would like to highlight the limitations of children’s representation, specifically indigenous children in the consultations held with children while developing the Draft General Comment No. 26. We recognize that the “Report of the first Children and Young People's Consultation”[[1]](#footnote-1) prepared after consultations lists the limitations encountered while seeking to engage with children. We acknowledge the report statement highlights limited access to online questionnaires, digital competencies, and literacy levels. The questionnaire was filled out by 61.49% of children who live in a city or town. Studies and cases show that children living in rural areas are more affected by climate change depicting huge disparities, for instance, access to safe water, and sanitation that contributes to their poor enjoyment of the right to health. Challenges with access to food and enjoyment of other fundamental rights that are impacted by climate change increase the forced migration of children from rural to urban areas.[[2]](#footnote-2) The report does not provide information on to what extent or if any indigenous children were engaged during the consultation period which is crucial to understand the issues and problems faced by them.

**Barriers while accessing the right to health by Indigenous children**

Although General Comment No. 26 dedicates the special section (part III section F. para 49- the right of indigenous children (art. 30)) to protect the rights of indigenous children, it also talks about this group in part III section G para 50 - the right to non-discrimination (art. 2), Part I section A. para 8, as well as Part III section C. para 34 and Part III section D. para 43 our report, names other issues that require intersectional approach and expansion of the paragraph dedicated to the right of indigenous children.

1. **Gender-based Violence, Survival, Development, & Trauma**
2. Violence against indigenous women and girls has been named as a key issue in the latest UN[[3]](#footnote-3) report. The document lists different forms of violence indigenous women and girls are facing including domestic, sexual, labor exploitation, and trafficking all of which have negative impacts on their lives. Although women and girls are typically associated with falling victim to gender-based violence (GBV) there are many other highly vulnerable groups such as those listed in the report “Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples” who have additional vulnerabilities while accessing their rights. These groups are “lesbian, gay, bisexual, transgender, intersex and two-spirit children, children with disabilities and those in remote or nomadic settlements or urban settings.”[[4]](#footnote-4) We have to take into account that this list is not exhaustive and there might be other additional intersecting underrepresented groups. However, it is important to note that draft General comment no. 26 in part III section G. the right to non-discrimination (art.2) paragraph 50 mentions underrepresented groups of children yet forgoes mentioning LGBTQIA+ children.
3. GBV hinders the participation and engagement of those experiencing such violations. Additionally, environmental harms impact the possibility of accessing food, land, and rivers having an increased impact on indigenous children. Therefore, recognizing that not only is participation hindered due to GBV, and climate change impacting access to necessary resources, but also the social determinants children face such as age, gender, location, social status, and other characteristics. Living through highly stressful conditions can cause severe trauma which further impacts people’s health, levels of participation in fighting against environmental harm, and their means of survival. Living with trauma render those to lose their ability to fully enjoy their rights to development and survival. The committee affirms its support for indigenous children's right to development and survival in section F. The right of Indigenous children (art. 30) paragraph 49. Therefore, the recognition of discrepancies in mentioning the impacts that trauma can cause on people facing highly stressful moments should be taken into consideration.
4. The damage caused by climate change has grave consequences for those impacted. The UN Environment Programme[[5]](#footnote-5) estimates 80 percent of people displaced by climate change will be women and girls. Displaced girls are at a higher risk of suffering different forms of violence due to displacement. In the areas where displacement is occurring due to climate change, women and girls are often the targets of armed groups.[[6]](#footnote-6) However, addressing displacement is a truly sensitive topic since indigenous communities are spiritually connected to the land they reside on. Therefore, when the displacement of indigenous communities occurs it has massive irreparable impacts on these communities. Causing indigenous communities to be reluctant or unwilling to move from their lands due to deep connections to their environment. These people who are being displaced are forced to leave behind ancestral burials, cultural lifestyles, and the land they are connected to in a profound manner.
5. We recognize that the committee seeks to address the matter of mental health in ​​section B. The right to the highest attainable standard of health (art. 24) paragraph 27. Yet, it forgoes commenting on the trauma that children experience by living in areas consumed by environmental harm. Although the general comment recognizes the hardships caused by the repercussions of going through the stressors of climate change, the topic should be addressed in a manner that truly conveys the all-encompassing message that needs to be told. Seeking to understand the trauma being experienced by mothers and children is of grave importance. Part III Section B para 29 mentions the right to deliver appropriate pre-natal maternal health care. However, this is the only place where maternal health is mentioned but it lacks in its measures to highlight the impacts on a child’s development. Additionally, ​​section B. The right to the highest attainable standard of health (art. 24) paragraph 26 fails to provide a fully comprehensive account of the impacts trauma can have on women’s pregnancies.
6. **Participation, Safety, & Engagement**
7. Increasing violence against environmentalists and Human Rights Defenders (HRDs) in the indigenous communities raises concerns. The data published by the UN Office of the High Commissioner for Human Rights (OHCHR) in 2020 states that out of 133 cases of Human Rights defenders, 19 percent were from indigenous communities.[[7]](#footnote-7) The OHCHR also reported on the criminalization of the activities of indigenous HRDs who have been fined due to their advocacy work in the support of their natural resources. HRDs who are facing criminalization and the lack of safe conditions in advocating for change, further exacerbate the disparities in securing their right to survival. These cases and overall repression against indigenous environmentalists impact indigenous children’s engagement and participation in advocacy work regarding climate change. Impacting their involvement due to fear of being met with dangerous acts that could lead to the deterioration of their safety and their mental and physical health. While the committee has sought to address these concerns surrounding Child HDRs in J. Freedom of expression, association and peaceful assembly (arts. 13 and 15) paragraph 60 it would be of value to address as well how the increasing violence against environmentalists and Human Rights Defenders (HRDs) in the indigenous communities could influence the participation and engagement of child HDRs.
8. The UN Declaration on the Rights of Indigenous Peoples recognizes the inherent rights of indigenous people holding the special right to access their lands and it highlights the importance of the enjoyment of these rights and its contribution to their well-being and their social, cultural, and economic development. Articles 8, 10, 25, 26, 27, 29 (1) of the declaration focus on the protection of the land rights of the indigenous people. In the case of their land usage for extractive projects within the indigenous territories according to Article 32. Para. 2 of Declaration on the Rights of Indigenous Peoples requires consent by the community. Indigenous children are not included in this conversation leaving their voices behind. Losing access to a healthy environment, land and the river that are also spiritually connected to indigenous people and specifically children is another stressor directly related to the children’s health condition. Indigenous and Tribal Peoples Convention (ILO convention No 169) part II, Articles 13, 14, 15, 16, 17, 18, 19 talks about the rights of indigenous people related to access to land and surrounding territories. Losing control over the natural resources and the right to grow up in a healthy environment would provoke the anxiety and deterioration of mental and physical health in children.[[8]](#footnote-8)

In addition, not involving children in the decision making process violates their right to be engaged. Article 12 of the Convention on the Rights of the Child promotes the approach of children giving a voice in all states and issues impacting them. Therefore, it is important to understand children's perspectives.

**Recommendations**

We have based our recommendations on already existing reports and relevant conventions of the United Nations suggesting that Draft General Comment No. 26 incorporate and fill the gaps between the United Nations Human Rights System aiming to promote coherent interpretations of the relevant protection measures related to rights of indigenous children. Taking into consideration the comprehensiveness and complexity of the general comment we think the complex approach to defining the right play is of utmost importance.

The issues related to the intersection below can fall under the rights of non-discrimination, the right to life, the right to an adequate standard of living, the right to drinking water and sanitation, and other rights that are intertwined with the right to health. Considering this fact, we would like to recommend:

a. That the draft general comment no. 26 in part III section G. the right to non-discrimination (art.2) recognizes all the underrepresented groups of children including LGBTQIA+ children. Therefore, we encourage the committee to expand on their statements made in section G. the right to non-discrimination (art.2) paragraph 50 to include the aforementioned list of “lesbian, gay, bisexual, transgender, intersex and two-spirit children, children with disabilities and those in remote or nomadic settlements or urban settings”[[9]](#footnote-9) into its declarations. We also recommend the committee to recognize that the list is not exhaustive and there might be other groups who are not necessarily listed in the above mentioned part.

b. We urge the committee to fully recognize the psychological impacts that children are exposed to in dangerous and hazardous environments that can cause severe trauma in ​​section B. The right to the highest attainable standard of health (art. 24) paragraph 27. The stress from suffering trauma can lead to a wide array of health issues such as high blood pressure, or the further development of other mental health issues such as depression or anxiety. The committee should expand on the notion that trauma is linked to the self-being of a person and in many cases, the most vulnerable and susceptible to suffering from trauma are children living in environments impacted by climate change.

c. We suggest the committee dedicate the specific paragraph to the prenatal and postnatal maternal health in Part III section A, 2 Right to survival and development encouraging states to create tailor based health programs considering the traditions of healing of indigenous people. With the focus on maternal health and child development the states should monitor and measure external factors and ensure a safe and healthy environment at all settings. It is also necessary for the committee to conclude that the trauma being faced by pregnant women has a substantial impact on the health outcomes of fetuses. Therefore, it is necessary to fully acknowledge the greater disparities women face due to climate change, environmental harm, GBV, and trauma.

d. To recognize the importance of access to natural resources and indigenous children’s spiritual connection to land, rivers, and other territories we suggest adding to the list “children in disadvantaged situations, such as children with disabilities, children belonging to minority groups, and children living in geographically vulnerable” indigenous children in Part III section I. the right of the child to be heard (art. 12) para 56.

e. Part III section I. the right of the child to be heard (art. 12) para 57 talks about the participation. We encourage the Committee to include in this paragraph barriers that might prevent children from participating in the decision making process. One of the barriers to indigenous children might be fear and violence against environmentalists in the territories as well as psychological trauma.

f. In part III section A. The right to life, survival, and development (art. 6) We would like to suggest the Committee add a separate section that would encourage states to implement policies and measures that could prevent the impact of climate change from girls being the victims of violence and displaced taking into account their spiritual connection with their land and additional harm to their health condition.

**Summary**

The Draft General Comment No. 26 on Children’s Rights and the Environment with a Special Focus on Climate Change has incorporated many important declarations already however, we believe that the document could benefit from expanding on the themes related to the right to health of indigenous children all while integrating a gendered lens highlighting the importance of an intersectionality approach to this draft. Therefore, we urge the committee to recognize to the fullest extent possible the impacts of gender-based violence, perpetrated against the most vulnerable groups of people, especially those experienced by indigenous peoples. The general comment should ensure the grave impacts caused by the continuation of gender-based violence against vulnerable groups of people such as girls and queer youth are ones that are not excluded from the narrative. Additionally, we push the committee to further address the impacts of social determinants to further enable the children's ability to fully participate in advocacy work. Finally, we urge the committee to incorporate all of the recommendations made to expand on the following sections

* ​B. The right to the highest attainable standard of health (art. 24) paragraphs 26 & 27
* F. The right of indigenous children (art. 30) paragraph 49
* G. the right to non-discrimination (art.2) paragraph 50
* Part III section I. the right of the child to be heard (art. 12) para 56
* J. Freedom of expression, association and peaceful assembly (arts. 13 and 15) paragraph 60

By doing so this Draft General Comment No. 26 on Children’s Rights and the Environment with a Special Focus on Climate Change will more holistically address the disproportionate disparities that impact children's rights in association with climate change and environmental harm.

1. Report of the first Children and Young People’s Consultation. General Comment. Childs Rights Environmental and Climate Change. September, 2021 [↑](#footnote-ref-1)
2. The Climate Crisis is a Child Rights Crisis:Introducing the Children’s Climate Risk Index.

   New York: United Nations Children’s Fund (UNICEF), 2021. [↑](#footnote-ref-2)
3. Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge. Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay\*. Human Rights Council. Fifty-first session. September-October 2022 [↑](#footnote-ref-3)
4. Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples

   Study of the Expert Mechanism on the Rights of Indigenous People. Human Rights Council Forty-eighth session. September - October 2021 [↑](#footnote-ref-4)
5. Climate Change exacerbates violence against women and girls United Nations Commissioner for Human Rights July 12, 2022 Last accessed on 02.10.2023 at <https://www.ohchr.org/en/stories/2022/07/climate-change-exacerbates-violence-against-women-and-girls> [↑](#footnote-ref-5)
6. Climate Change exacerbates violence against women and girls United Nations Commissioner for Human Rights July 12, 2022 Last accessed on 02.10.2023 at <https://www.ohchr.org/en/stories/2022/07/climate-change-exacerbates-violence-against-women-and-girls> [↑](#footnote-ref-6)
7. Rights of indigenous peoples. Report of the United Nations High Commissioner for Human Rights.

   Human Rights Council. Forty-eighth session. September - October 2021 [↑](#footnote-ref-7)
8. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya\* Extractive industries and indigenous peoples. Human Rights Council. Twenty-fourth session [↑](#footnote-ref-8)
9. Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples

   Study of the Expert Mechanism on the Rights of Indigenous People.Human Rights Council Forty-eighth session. September - October 2021 [↑](#footnote-ref-9)