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| **Comment on the** **CRC Draft General Comment No. 26** *„Children’s rights and the environment with a special focus on climate change”***by the Network of Institutions** **for Future Generations** | Icon  Description automatically generated |

February 13th, 2023

**Executive summary**

1. The Network of Institutions for Future Generations (NIFG) is an umbrella organization of institutions that engage in future generations advocacy on the national and international level. The Network was created in 2014 inspired by the report of the UN Secretary General entitled “Intergenerational Solidarity and the Needs of Future Generations”, which mentioned the founding member organizations as institutional best practices for representing the needs of future generations. The mandate of NIFG is to share knowledge, disseminate good practices and advocate for the promotion of responsible, long-term governance, taking into consideration the well-being of future generations and their natural environments. NIFG’s members build their work around the UN Sustainable Development Goals and are active stakeholders in ongoing UN processes regarding future generations (e.g. the planned Declaration for Future Generations, Special Envoy for Future Generations, Summit of the Future).

2. Members of NIFG have years-long expertise regarding future generations advocacy and policy making. Drawing on these insights, NIFG’s input will comment on how the Draft General Comment 26 (“GC) could ensure that the principle of inter-generational equity informs the protection of children’s rights. Building on key linkages, this paper aims to provide a different, albeit synchronized perspective for reinforcing the message of GC. We believe that building in **additional wording regarding *reliance on the precautionary principle and on the more elaborate content of inter-generational equity principle*** helpscreate the foundation for the future-oriented protection of current and future children’s rights in the environmental context*.* We also offer some amendments to consider *action* *against risks of children to be born in the future* (transgenerational risks) and to highlight and build more upon the foundation of *long-termism and* *inter-generational equity when describing states’ climate mitigation obligations*.

**Introduction to the representation of the interests of future generations**

3. We applaud that the Committee recognizes the principle of inter-generational equity and the interests of future generations in the GC in paragraph 13. We also welcome that the GC adopts a long-termist perspective and approach to States’ obligations under the Convention on the Rights of the Child (“Convention”). The normative system of protection for the interest of future generations has been evolving dynamically, largely in isolation from the field of the rights of the child. Nowadays almost half of the national constitutions around the world chooses to protect the interests or needs of posterity through specific provisions mentioning future generations[[1]](#footnote-1) in national constitutions and statutory law.[[2]](#footnote-2) Some of them link the protection to human rights, such as the right to a healthy environment, or create duties for the State, e.g. through public trust provisions, [[3]](#footnote-3) to protect the interests of future generations.

1. Protecting the interests of future generations fosters long-term thinking and planning, trying to expand the planning horizon of stakeholders to span across multiple generations. In certain legal cultures, the relevant time horizon is more accurately articulated, such as by the seventh generations principle of Iroquois philosophy, whereas in other jurisdictions, the exact definition of ‘future generations’ is not codified in law. In Wales, public bodies are expected to consider the effects of their decisions at least 10 years, and preferably 25 years, ahead.[[4]](#footnote-4)
2. The exact catalogue of State obligations derived from inter-generational equity is different from those enshrined in the Convention. The framework of inter-generational equity, as originally developed by Edith Brown Weiss, stipulates three basic obligations for States: the conservation of options, the conservation of quality, and conservation of access to natural resources for later generations.[[5]](#footnote-5) Statutory provisions and respective case-law may further specify inter-generational obligations. The Welsh Well-being of Future Generations Act, for instance, confers a set of concrete obligations on ministers and public bodies. In Hungary, the Constitutional Court found that the imperative to respect the interests of future generations limits the State’s legislative room for manoeuvre in important respects.

## **On the relationship between children’s rights and rights of future generations**

1. The relationship between the rights of children and the interests of future generations is a complex one: these guarantees to some extent overlap, whereas their aims and approaches remain distinct in important respects due to which the protection they offer may complement and reinforce each other. *Even though both paradigms are conceptually closely linked to the principle of inter-generational equity, their personal, temporal, and material scope as well as normative content are different in important respects*. These doctrinal differences distinguish the protection of future generations from that of the rights of the child, both from an analytical and a practical point of view, but also offer synergies for a stronger representation of both rights holders.
2. Both forms of protection aim to safeguard the interests of individuals, who are most vulnerable to the decisions of stakeholders and are also disenfranchised in the democratic decision-making processes*. The interests of children and future generations alike have to be represented by proxies and spokesperson institutions in policy-making and litigious processes*. Doing so meets the shared challenge of articulating and defining such interests regarding environmental and climate risks based on probabilistic scientific results. The *precautionary principle* therefore lies at the heart of affording efficient protection in both regimes. Both also seek to address risks of environmental and climate harm that materializes in a few decades from now. To that extent, several specific rights of children coincide with the interests of future individuals, both children and adults.
3. However, future generations advocacy envisages protection on even longer timescales than what could be enforced based on the rights of children. The personal scope of the protection of future generations includes unborn generations too (including both future children and future adults). As a consequence, its scope necessitates *protection against even longer-term harm and more distant risks of harm than what could be demanded by children of the present*. *This results in an even more future-oriented legal regime, which aims at safeguarding future individuals (children and adults alike) specifically against long-term risks.* At the same time, protecting, respecting and fulfilling rights of future generations for children to be born in the years to come, will ensure a higher standard of living, healthier early childhood development and more stability and equity for these generations. In return that allows their future generations to grow up in a more just, stable, and healthier home environment and society. So realising future generations rights in the short term, benefits other future generations in the longer run.

## **Comments on clarifying the normative content of inter-generational equity**

1. One of the objectives of the GC is to promote a holistic understanding of children’s rights in relation to environmental and climate protection. We believe that achieving this goal necessitates addressing the linkages between the rights of children and the interests of future generations in the text more in depth.
2. Specifically, ***the GC should further elaborate on the normative implications of the principle of inter-generational equity in the section introducing key concepts***. These remarks could then guide the interpretation of the specific passages of the GC that refer to the principle. We recommend expanding on the principle’s content by amending the end of paragraph 13 with the following sentences:

***The inter-generational equity principle is understood as requiring the conservation of options, the conservation of quality, and the conservation of access to natural resources for future generations.[[6]](#footnote-6) Current generations ought to pass on the Earth’s resources to their children in no worse condition than they received them.[[7]](#footnote-7) These inter-generational obligations limit the unfettered discretion of the State, both the legislative and the executive branch, in adopting laws and policies that may have trans- and multigenerational adverse impact on the climate system, the ecosystem and natural resources, undermining the life opportunities and the quality of life of children in the future. Policies pursued in the present ought not put future generations on path-dependency. The principle of inter-generational equity also requires States to adopt a long-term planning horizon in designing environmental and climate measures.***

## **Comment on emphasizing the need to consider and act against transgenerational risks**

1. The general remarks on inter-generational equity should also clearly stress, by amending para. 13, that the principle also mandates protecting the interests of even yet unborn children against distant, nevertheless, real climate and environmental threats:

Such effects include the foreseeable environment-related threats arising as a result of acts or omissions of States now, the full implications of which may not manifest for years or even decades, ***and thus may impact children who will be born in the future.***

1. In the same vein, among the general obligations of States under the Convention, the text should clarify that *obligations also extend to a transgenerational context*, therefore, States are expected to respect even the rights of children who are not yet born today. To that end, we recommend amending the text with the following sentence at the end of paragraph 80:

 ***If foreseeable risks threaten with undermining the life opportunities and health of future children yet unborn, protective measures should be suitable to prevent such trans-generational adverse effects as well.***

## **Comment on more express reliance on the precautionary principle**

1. It is very laudable that the precautionary principle is referenced as a key concept in the GC, because the principle is indeed intimately linked to protecting the long-term interests
of children and future generations against foreseeable environmental hazards. *In line with the precautionary principle, risks are deemed foreseeable even if they are supported by probabilistic and inconclusive scientific data*. Scientific uncertainty inescapably burdens all scientific information, which must not be deemed as an excuse for limiting the scope of ‘foreseeable’ risks. The GC should guard against the principle’s possible narrow or weak interpretation that limits its normative reach and implications. We therefore suggest amending paragraph 13 of the GC with the italicized text:

Such effects include the foreseeable environment-related threats, ***approached on the basis of the precautionary principle,*** arising as a result of acts or omissions of States now, the full implications of which may not manifest for years or even decades.

1. In the same vein, the GC should make the implications of the precautionary principle even more explicit in paragraph 76 too, by adding the following sentence to the end of that section

***The serious risk of such harm should be deemed sufficient basis for States to pass protective measures in harmony with the precautionary principle.***

## **Comments on States’ climate mitigation obligations (VI. Section C.)**

1. We find it important that the GC would stress among the guiding principles relating to States’ climate mitigation obligations that such measures must be designed with a view to respecting the long-term interests of future generations. The GC should therefore refer explicitly to the principle of inter-generational equity by adding the italicized sentence to paragraph 102:

States’ obligations under the Convention should reflect their commitments under the international climate change regime and the best available climate science, namely their agreed objective to achieve the global goal to limit global warming to well below 2°C, while pursuing efforts to limit the temperature increase to 1.5°C. ***States’ climate commitments must be designed to respect the interest of future generations, including children born in the future in line with the principle of inter-generational equity.***

1. Moreover, adding to the normative content on intergenerational-equity and the precautionary principle, we would draw attention to the *principle of fairness* between present and future generations, including distribution of burden and costs. The Dutch ‘Urgenda’ climate judgment reflects on this, drawing on the principles expressed in the UN Climate Change Convention. The principle of fairness means that the policy should not only start from what is most beneficial to the current generation at this moment, but also what this means for future generations, so that *future generations are not exclusively and disproportionately burdened with the consequences of climate change*.It also expresses that *industrialised countries have to take the lead in combating climate change* and its negative impact, since they are the main emitters and also benefited most from the use of fossil fuels, in the form of economic growth and prosperity. Accordingly, these countries have the most means available to take measures to combat climate change.*Due to this principle of fairness, the State, in choosing measures, will also have to take account of the fact that the costs are to be distributed reasonably between the current and future generations. If according to the current insights it turns out to be cheaper on balance to act now, the State has a serious obligation, arising from due care, towards future generations to act accordingly.* Moreover, the State cannot postpone taking precautionary measures based on the sole reason that there is no scientific certainty yet about the precise effect of the measures, however, a cost-benefit ratio is allowed here. Finally, the State will have to base its actions on the principle of “prevention is better than cure”.[[8]](#footnote-8)

 It is very laudable that the GC calls for adequate implementation measures to realize States’ obligations concerning children’s right to a clean, healthy and sustainable environment, including a safe climate, in their national legislations. As noted earlier, securing the rights of currently living children not necessarily affords adequate protection for generations yet unborn, and vice versa. [[9]](#footnote-9) The GC should therefore also make clear, that *national implementation measures cannot lead to replacing existing future generations institutions or be used as a reason for not establishing such dedicated spokesperson institutions*, as conferring both tasks on a single institution may result in inefficient protection for at least one of the protected groups, or even both of them. In a growing number of jurisdictions around the world, inter-generational rights and obligations are promoted by dedicated future generations institutions, which represent transgenerational interests that fall beyond the traditional temporal and material scope of the Convention[[10]](#footnote-10). We therefore recommend amending the end of paragraph 103 with the following sentence:

***Such national implementation measures cannot serve to hinder the establishment of spokesperson institutions dedicated to the protection of future generations, with regard to the partly distinct scope, reach and normative content of the regimes of promoting the interests of future generations, on the one hand and the rights of children, on the other hand.***

1. Moreover, States’ *mitigation measures should also adopt a long-term planning horizon in accordance with the principle of inter-generational equity*. This necessitates that States pursue decarbonization for which they should specify long-term mitigation commitments. States should design a mitigation trajectory that is suitable to reach net zero global emissions on time to avert cataclysmic climate harm in the light of the results of the most up-to-date and reliable climate science. The 2022 report of the International Panel on
Climate Change confirms that reaching net zero global emissions in the early 2050s is key to meet the 1.5 0C temperature goal.[[11]](#footnote-11) We therefore recommend amending paragraph 111 with a new subsection (d) as follows:
2. ***States’ mitigation measures should also be adopted with a long-term planning horizon. The GHG reduction pathway should specify long-term mitigation commitments and be designed to reach decarbonization at a time, which is suitable to avert cataclysmic climate harm in the light of state-of-the-art scientific projections.***

 **Conclusion**

The suggested changes all aim to build upon **a stronger fundamentum within a longer time horizon for the protection of children of any generations** against environmental harm with a special focus on climate change. The recommendations stem from the necessity to acknowledge and accommodate some synergies and differences between the protection of future generations and that of children. Consequently, we have offered additional wording to the following sections of the Convention:

* section II. Key concepts in B. Intergenerational equity and future generations;
* section V. General obligations of States; and
* section VI. Climate change.

The suggested wording puts more emphasis on intergenerational equity and the precautionary principle while also takes into account transgenerational risk and the need for states’ obligations for climate-change mitigation with a longer time-horizon. We trust that combining a child rights-based approach with arguments and principles for safeguarding the rights of future-generations can result in a better informed and more complex protection for both in the environmental context on a longer timescale.

1. R Araújo – L Koessler: The Rise of Constitutional Protection of Future Generations, LPP Working Paper No. 7-2021 identifying such provisions in 81 out of 198 constitutions. [↑](#footnote-ref-1)
2. See e.g. such the Well-being of Future Generations Act, adopted by Wales, in more details see *www.futuregenerations.wales*  [↑](#footnote-ref-2)
3. E.g. the Fundamental Law of Hungary provides for the concept of the common heritage of the nation [↑](#footnote-ref-3)
4. Alan Netherwood and Andrew Flynn: A shift in public policy for future generations in Wales? Future generations and well-being planning, In: Jan Linehan – Peter Lawrence (eds.) Giving Future Generations a Voice, Edward Elgar Publishing, 2021, pp. 149-168, at 152*.* [↑](#footnote-ref-4)
5. Edith Brown Weiss: In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity, Transnational Publishers Inc., New York, 1988., pp. 40-45. [↑](#footnote-ref-5)
6. See n.6 above. [↑](#footnote-ref-6)
7. 1988 Goa Guidelines on Intergenerational Equity drafted by an advisory body for the project on International Law and Intergenerational Equity with the United Nations University. [↑](#footnote-ref-7)
8. The human rights based climate case of „Urgenda et al vs. The State of The Netherlands”, ECLI:NL:RBDHA:2015:7196, see <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2015:7196> [↑](#footnote-ref-8)
9. Aoife Nolan: The Children are the Future – Or Not? Exploring The Complexities of the Relationship between the Rights of Children and Future Generations, EJIL Talk!, May 26 2022, available at https://www.ejiltalk.org/the-children-are-the-future-or-not-exploring-the-complexities-of-the-relationship-between-the-rights-of-children-and-future-generations/ [↑](#footnote-ref-9)
10. Notably, in the countries where NIFG member institutions are functioning, the promotion of the rights of children is a separate portfolio, mandated to other institutions or other spokesperson within the same institution. [↑](#footnote-ref-10)
11. Report of the IPCC Working Group III, Mitigation of Climate Change 2022, Summary for Policy-makers, C.2., available at <https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf> [↑](#footnote-ref-11)