Comments on Draft General Comment 26:

Children's Rights and the Environment, with a Special Focus on Climate Change

UN Committee on the Rights of the Child

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First of all, I would like to commend the Committee for its extensive and successful efforts to reach out to as many children and youth as possible to generate input into this General Comment. Second, I would like to congratulate the Committee for producing a very strong first draft of General Comment 26, which was surely not an easy task in light of the complex interactions between children’s rights, the triple planetary crisis and pervasive inequality.

The most striking aspect of the *Report of the First Children and Young People’s Consultation* (September 2022) is the repeated calls for adults to stop procrastinating (e.g. girl from Bangladesh, 15 and boy from India, 15) and accelerate actions to protect the climate and the environment. As the UN Special Rapporteur on human rights and the environment, I wholeheartedly endorse the observations of these wise young people. Indeed, this perspective was also at the forefront of regional consultations that I participated in during recent years as part of the Children’s Environmental Rights Initiative, involving youth from all over the world.

Therefore, I encourage the Committee to proceed with the revision and publication of the final version of General Comment 26 with an appropriate degree of urgency, reflecting the calls for urgent action found within the draft itself, at paras 1, 4, 11, 104 and 111.

Below I will provide suggestions ranging from important substantive amendments to mere grammatical edits. For ease of reference, the former are in bold.

**Para. 1**

**Consider strengthening the opening paragraph by replacing “the environmental harm” with “the triple planetary crisis, comprised of the climate emergency, the collapse of biodiversity and pervasive pollution”**

**The phrase “triple planetary crisis” is widely used by UN agencies and leaders.**

**Para 8.**

**A clean, healthy and sustainable environment is necessary for the fulfillment of a broad range of children’s rights …**

**Suggested change (adding words in *italics*):**

**A clean, healthy and sustainable environment is *both a human right itself, and also* necessary for the fulfillment of a broad range of children’s rights, including …**

**Rationale**

**It is odd that the lengthy list of children’s rights in para. 8 does not include the right to a clean, healthy and sustainable environment, despite there being a section dedicated to this particular right later in the GC. It is conspicuous by its absence.**

Para. 8

I encourage the Committee to capitalize Indigenous, as a sign of respect, and an increasingly common convention. See paras. 34, 43, 49 and 105 for additional places where Indigenous should be capitalized.

Paras. 9 and 10

Consider adding a footnote to 10(b)—A/HRC/43/53 is the report that details the number of States that recognize, in law, the right to a healthy environment

**Part II. Key Concepts**

**I strongly encourage the Committee to add the key concept of prevention (which is distinct from, and arguably more important than, precaution). Precaution refers to situations where there is a significant degree of scientific uncertainty about the environmental or health impacts of a product or activity, e.g. the health impacts of PFAS or microplastics. Prevention applies to all environment and climate harms that are known or relatively well known, from air pollution to water contamination to lead exposure, etc. Prevention is recognized by the OHCHR as a human rights principle.[[1]](#footnote-1)**

**Prevention is also a principle of international environmental law. In 1972, the Stockholm Declaration on the Human Environment proclaimed that “States have the “responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”[[2]](#footnote-2) As expressed by the International Court of Justice, “the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory.”[[3]](#footnote-3) The European Court of Human Rights has held that governments must effectively prevent foreseeable threats to human rights from dangerous human activities and natural disasters.[[4]](#footnote-4)**

**The UN Human Rights Committee, in its General Comment 36 on the right to life confirmed the importance of an integrated approach to international human rights law and international environmental law, stating “Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law.”[[5]](#footnote-5)**

Para. 12

Wording is a bit awkward—“The sustainable development

Suggest dropping “The” and adding commas after development and protection

Could also delete “an” from the second sentence

**Part III—Specific Rights**

**Would Part III flow more logically if the rights were ordered in the sequence in which they appear in the Convention?**

**I strongly encourage the Committee to prioritize non-discrimination and equality—fundamental principles of international human rights law and of central importance in the pursuit of environmental justice! Para. 50 describes a right to non-discrimination but comes so far into the draft General Comment that it does not seem adequately emphasized.**

**UN treaty bodies often frame non-discrimination as an obligation for States (see Committee on Economic, Social and Cultural Rights, General Comment 20: Non-discrimination in economic, social and cultural rights, paras 1-3; Framework Principles on Human Rights and the Environment, Principle 3). These obligations should be articulated in some detail because of their central importance (e.g. addressing both direct and indirect discrimination, and States’ duty to alleviate existing situations of discrimination such as sacrifice zones, see A/HRC/49/53).**

**Related to non-discrimination and equality, I note that the report contains five references to girls, zero to boys and zero to gender-diverse children. The latter is a serious oversight that must be remedied. For supporting information, please see https://ishr.ch/latest-updates/treaty-bodies-un-treaty-bodies-advance-lgbti-rights/ For an excellent article on the Committee’s strong track record in addressing the rights of LGBTQ+ children, please see Paula Gerber and Aaron Timoshanko, “Is the UN Committee on the Rights of the Child Doing Enough to Protect the Rights of LGBT Children and Children with Same-sex Parents?”, *Human Rights Law Review*, 2021, 21, 786-836.**

Para. 17

In the second sentence, consider replacing precautionary with preventive.

Para. 18

a) consider adding “cultural” to the spheres of development listed in the first sentence

b) consider deleting “and the animal world” in the final sentence as this is an odd phrase. For one, humans are animals. It is also covered by the preceding phrase “natural environments”, which are widely interpreted as including animals, plants and fungi.

**Para. 25**

**The COVID-19 pandemic had catastrophic consequences for child rights across the world—including the rights to life, health, education and play—yet is not mentioned in the draft GC. Scientists are emphatic that the recent surge in zoonotic diseases is likely to continue unless systemic actions are undertaken to stop spillover at the source, meaning through preventing deforestation, restricting the commercial wildlife trade and limiting the intensification of livestock production. This paragraph provides an important opportunity to mention the rise in zoonotic diseases, the environmental causes, and the risks for the rights of the child.**

**This could also be mentioned in the section on the child’s right to education (paras. 31-38), which has been so egregiously disrupted by the COVID-19 pandemic.**

**See Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services *IPBES Workshop on Biodiversity and Pandemics: Workshop Report* (Bonn, 2020). See also A/HRC/52/44, *Summary of the expert seminar on human rights and environmental conservation in the prevention of future pandemics*.**

Para. 28

What is meant by “national plan, policy or strategy”? Needs additional detail to clarify.

Para. 29

Consider adding a safe climate to the list of conditions required so that children can lead a healthy life.

**Para. 33**

**Consider adding a mention of incorporating environmental action in schools, as this is something children themselves identify as very important. Whether it is picking up litter, growing a school garden, establishing a recycling program or installing solar panels, school-based environmental action is tremendously empowering for children.**

Para. 45

Consider deleting the word “rich”, as in some contexts, biodiversity is not actually rich, but is still important (e.g. Arctic regions where Inuit people depend on marine mammals).

**F. The right of indigenous children (art. 30)**

**Rewording is urged here, as article 30 explicitly applies to children belonging to other potentially vulnerable groups (ethnic, religious or linguistic minorities), in addition to Indigenous children.**

**Please consider changing the title of Section F to “The rights of Indigenous children and children from ethnic, religious or linguistic minorities”**

**The paragraph should include comments addressing the challenges facing children from all of these potentially vulnerable groups.**

**Consider adding two words in the last sentence: “integrating, as appropriate, *concepts from* Indigenous cultures and knowledge”**

**Consider adding a reference to the importance of maintaining and passing on Indigenous languages which are being lost simultaneously with the loss of biodiversity.**

**Para. 50**

**As mentioned earlier, please consider adding LGBTQ+ youth to the list of children who face heightened barriers to the enjoyment of their rights in relation to the environment due to multiple and intersecting forms of discrimination. This Committee is an acknowledged leader amongst treaty bodies in advancing the rights of LGBTQ+ persons, so the silence on this point would be a regrettable step backwards.[[6]](#footnote-6)**

Para. 53

Replace the phrase “safe, healthy and sustainable environment” with “clean, healthy and sustainable environment” (as per A/HRC/RES/48/13 and A/RES/76/300).

Para. 57

Consider emphasizing the importance of institutionalizing mechanisms for child representation, including youth members of national advisory councils on climate change, national children’s parliaments and youth delegates on negotiating team at multilateral environmental conferences. One of the most powerful systemic changes that can be made by States to recognize the rights and indeed the voices of youth is to lower the voting age, which has already been done in a number of leading States seeking to empower young people and enliven democracy.

Para. 64

Consider encouraging the creation of child-centered human rights institutions, as found in Chile, Ireland and Mauritius, among others.

Para. 68

Consider replacing the second half of the first sentence “while they should have access to State-based remedies” with “children/victims should also have access to State-based remedies”

In last sentence, add “to” in front of “monitor abuses”

**Para. 73**

**Consider adding a new sub-paragraph.**

**73 (g) eliminate the mining, manufacturing, sale, use and release of toxic substances that are known to have disproportionate adverse health effects upon children including lead, mercury and other developmental neurotoxins (see A/HRC/49/53)**

Para. 74

Consider deleting the ending phrase “rather than passively inheriting a clean, healthy and sustainable environment.”

**Para. 78**

**Consider replacing the phrase “without convincing justification” with stronger language, as indicated by the Committee on Economic, Social and Cultural Rights in its General Comment 3 on The Nature of States’ Parties Obligations, where it explained that “any deliberately retrogressive measures … would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”[[7]](#footnote-7)**

**Consider substituting “States shall not take retrogressive measures that are less protective of children except in extraordinary circumstances where no other approach is feasible.”**

Para. 80

Consider adding a reference to the “best interests” principle.

Para. 81

Consider deleting the first sentence which is vague and covered by subsequent sentences.

Paras. 82-83

Consider mentioning intersectionality as part of heightened obligations.

Paras. 85-86

Consider expanding the current focus on individual action to include collective action. Children also need information about systemic and structural obstacles to a just and sustainable future so that they can contribute to the transformative changes needed to overcome these obstacles.

**Paras. 87-89**

**Consider recommending the integration of child rights impacts assessments, human rights impacts assessments, and environmental impact assessments into a single process**

**States may be understandably concerned about the possibility of creating parallel, overlapping processes that fragment the possibility of a single comprehensive assessment. It seems preferable to integrate these into a cumulative child rights, human rights and environmental impact assessment.**

Para. 92

Consider replacing global operations with global supply chains (as the latter is broader).

Para. 94

Consider adding biodiversity loss to the third sentence: “Climate change *and biodiversity loss* clearly represent~~s~~ archetypal example*s”*

**Paras. 94-97**

**International cooperation in these paragraphs is focused on climate change, yet comes right before the section on climate change, which also addresses international cooperation. I’m wondering if more attention could be placed on biodiversity loss in paras. 94-97 to avoid overlap and duplication? There is some very useful language in the recent Kunming-Montreal Global Biodiversity Framework that could be used in place of the current climate-focused examples in these paragraphs.**

Para. 97

Consider adding “their nations” so that the final phrase reads “addressing the devastating impact of both sudden- and slow-onset forms of climate disruption on children their communities and their nations.”

Paras. 100 and 101

The words cause and effect should both be plural in both of these paragraphs.

Para. 101

The phrase “business sectors” could be replaced by the word businesses.

**VI. Climate change**

**Consider strengthening the language of this section and the entire General Comment when referring to the climate crisis. In the current draft, the phrase “climate change” is used 43 times, “climate crisis” is used twice (paras. 73 and 98) and “climate emergency” is used zero times.**

**There are no references in the climate crisis section (VI) to fossil fuels, yet fossil fuels, as young people have forcefully argued, are primary drivers of the climate crisis. Similarly, there are zero references to renewable energy, energy storage and energy efficiency, although these terms are used in para. 73(d) and are preferable to the phrase “zero carbon technologies” used in para. 117, as this latter phrase is widely understood to include nuclear energy. Finally, “renewable energy” is a better phrase than “renewable technologies”, used in paras 117 and 118.**

**I encourage the Committee to consider reversing the order of the sub-sections on Adaptation and Mitigation so that Mitigation comes first. Logically our priority should be to prevent/minimize the problem, then respond to/ adapt to its current and anticipated impacts.**

**It is essential to then add a sub-section on Loss and Damage (the third pillar of climate action, as envisaged in the Paris Agreement, Article 8), following the sub-sections on Mitigation and Adaptation.** There has been an almost total failure to provide funds for vulnerable countries to deal with climate loss and damage. It is estimated that the annual economic costs of loss and damage will be between US$290 billion - 580 billion in developing countries by 2030.[[8]](#footnote-8) These economic costs are expected to rise to between US$1 trillion - $1.8 trillion per year by 2050. Wealthy States have produced the vast majority of the greenhouse gas emissions that caused the climate crisis and thus must bear the lion’s share of the responsibility for paying the costs of loss and damage. Loss and damage affect children both directly (through the impacts of extreme weather events and slow-onset crises such as drought and sea-level rise) and indirectly (by forcing States to re-allocate resources away from education, health care and other essential services to pay the costs of responding to the climate crisis).

Para. 102

Consider substituting “be informed by” for “reflect” in the first sentence.

Consider strengthening the second sentence as follows (revised text in italics): “Reports by the Intergovernmental Panel on Climate Change illustrate that complying with *these limits are imperative, and current global efforts are not on track*.”

**C. Mitigation (paras. 108-113)**

**Consider specifically stating that accelerated actions are required to phase out the combustion of fossil fuels, end deforestation and transform the industrial food production system.**

**These are the critical actions required to effectively mitigate the climate crisis, according to the IPCC.**

Para. 109

Clarify the sentence: “Greater risk in relation to children’s rights and climate change represents the passing through so-called “tipping points”, or thresholds beyond which certain impacts can no longer be avoided.”

Suggested wording: Scientists warn about “tipping points”, which are thresholds beyond which certain climate impacts can no longer be avoided, posing dire yet uncertain risks to children’s rights. Avoiding tipping points requires urgent and ambitious action to reduce atmospheric concentrations of greenhouse gases.

Para. 111

In order to highlight the importance of ambitious climate action, consider adding “objectives” to the opening sentence as well as (a) and (b) so that this paragraph reads as follows (proposed additions in italics):

111. When determining the appropriateness of their mitigation *objectives and* measures in accordance with the Convention, States should take into account the following criteria:

(a) Mitigation *objectives and* measures should clearly indicate how they respect, protect and fulfil children’s rights under the Convention. States should transparently and explicitly focus on children’s rights when preparing, communicating and maintaining nationally determined contributions. This obligation includes biennial update reports, international assessment and review, international consultation and analyses.

(b) Mitigation *objectives and* measures should be informed by the principles of equity and …

Para 111(e)

Consider replacing “also take” with “prioritize”.

Para. 112

Consider strengthening this paragraph to be consistent with para. 75. I suggest replacing “should consider” with “should” or “must” to be consistent, and consider replacing the phrase “financial incentives” with the word “subsidies”. Paragraph 75, which employs stronger language says, in part, “The obligation to respect requires States to refrain from violating children’s rights by causing environmental harm, for example by subsidizing products or activities that produce toxic pollution or contribute to climate change.”

Para. 114

Consider deleting the word “locally” from the first sentence.

Para.117

There is a missing word in the first sentence, which could be fixed as follows (italicized): “particularly by those *businesses* that are State-owned”.

**Para. 118**

**This paragraph is missing a key point. Investor-State dispute settlement mechanisms embedded in international trade and investment treaties are costing States billions of dollars in response to legitimate climate actions (e.g. Italy ordered to pay British company Rockhopper $250 million for refusing to issue offshore oil drilling permits; Netherlands facing multi-billion dollar ISDS lawsuits for closing coal fired power plants; and Slovenia sued for $500 million for refusing to grant fracking permits). The spectre of ISDS lawsuits is discouraging States from implementing ambitious climate action (e.g. Denmark, France and New Zealand all withdrew proposed oil and gas exploration bans when threatened with ISDS lawsuits).**

**Consider adding language along these lines: States should consider withdrawing from or terminating international trade and investment agreements that prioritize foreign investors over child rights. Foreign investors should not be able to use international arbitration claims to either seek compensation for government actions taken to address the climate crisis or to dissuade governments from taking strong climate action for fear of paying compensation.**

**Para. 121**

**While the mitigation/adaptation allocation issue is troubling, a bigger problem is that much of the climate finance to date is in the form of loans, not grants. This worsens the financial position of climate vulnerable States, most of whom are facing public debt crises, forcing them to allocate funds to debt servicing at the cost of budgets for education, health care, climate and environmental action, with devastating implications for children’s rights.**

Para.122

Consider changing the wording of the last sentence as follows: “prevent and address ~~financed~~ *the financing of* mitigation and adaptation measures that could lead to violation of children’s rights.”

Para. 123

Consider strengthening the closing paragraph. The following quote from the *Report of the First Children and Young People’s Consultation* is very powerful: “The time for meaningful climate action is now. We have talked and discussed, we know what needs to be done and the solutions are there. It is now time to act, we need your help and likewise, you need our help. We must do this together.” (Girl, 15, Trinidad and Tobago).

1. See the OHCHR on prevention:

   <https://www.ohchr.org/en/prevention-and-early-warning/preventing-human-rights-violations#:~:text=In%20the%20same%20way%20that,promote%20and%20protect%20human%20rights> [↑](#footnote-ref-1)
2. Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1, Principle 2. [↑](#footnote-ref-2)
3. International Court of Justice, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, ¶ 101; *Certain Activities and Construction of a Road* (Costa Rica v. Nicaragua), I.C.J Rep. 2015, ¶ 104. [↑](#footnote-ref-3)
4. *Öneryildiz/Turkey* (ECtHR 30 November 2004, no. 48939/99). [↑](#footnote-ref-4)
5. UN Human Rights Committee, 2018, General Comment 36 on the right to life, CCPR/C/GC/36, para. 62. [↑](#footnote-ref-5)
6. According to experts, “the CRC Committee is at the forefront of UN treaty committees in the depth and breadth of attention it has given to protecting the rights of LGBT children in its General Comments”. Paula Gerber and Aaron Timoshanko, “Is the UN Committee on the Rights of the Child Doing Enough to Protect the Rights of LGBT Children and Children with Same-sex Parents?”, *Human Rights Law Review*, 2021, 21, 786-836 at 822. [↑](#footnote-ref-6)
7. Committee on Economic, Social and Cultural Rights, General Comment 3 on The Nature of States’ Parties Obligations, para. 9. [↑](#footnote-ref-7)
8. Anil Markandya and Mikel González-Eguino, “Integrated Assessment for Identifying Climate Finance Needs for Loss and Damage from Climate Change”, *in* Mechler R., Bouwer, L., Schinko, T., Surminski, S. Linnerooth-Bayer, J. (eds), *Loss and Damage from Climate Change: Concepts, Methods, and Policy Options*,(Springer, Cham, 2019). [↑](#footnote-ref-8)