**German statement regarding Draft General comment No. 26 – Children’s rights and the environment with a special focus on climate change, by the UN Committee on the Rights of the Child**

**General remarks:**

* Germany would like to express its thanks for the opportunity to make a statement on the Draft.
* We welcome the Committee’s efforts to discuss the impact of environmental destruction, of the loss of biodiversity, and of climate change, on children’s human rights.
* Germany would like to point out once more that the General comment should focus on interpreting the UNCRC. We also hold that other relevant international legal acts may be used when interpreting the UNCRC. In order to make the General comment more comprehensible and authoritative, it should however comply strictly with the established methods used when interpreting binding international agreements on human rights, and should clearly present and explain the methodical steps undertaken in the interpretation of the Convention. This also includes a requirement that the General comment should provide substantive reasoning where it maintains that specific obligations may be derived from the Convention, instead of simply maintaining that this is the case. The General comment should for instance explain the source and the foundation contained in the Convention on which the principle of intergenerational equity and the interests of future generations (para. 13) are based. There is a need to explain how specific State obligations can be derived from the Convention (e.g. paras. 28, 75, 77, 78, 92, 94, 100 and 116). As a minimum, the Convention articles from which the Committee derives the obligations should be specified in some cases. There is a need to determine in Chapter V in particular specifically from where the States’ “obligations” that are mentioned in the text are derived. The wording of claims is rather general, and it would be desirable to tighten the language and content in order to make a more precise distinction between real obligations (in terms of international agreements), and political appeals pure and simple.
* We regret that the Committee has not availed itself of the opportunity to explore in greater detail the question of the States’ extraterritorial responsibility. The somewhat brief statement on the creation of access to justice in cases involving business enterprises (para. 68), and on obligations regarding climate change (para. 100), is unfortunately not sufficient in order to really illustrate this question. Germany considers the concept of jurisdiction contained in article 2, paragraph 1 of the Convention to be a cornerstone of the Convention system which limits its extraterritorial application. In order to enable the States to effectively deploy their resources in the interest of protecting human rights, especially in connection with environmental destruction, it is vital to clearly delimitate the States’ jurisdictions. Since the scope of the Convention is largely territorial, each case of extraterritorial application should be based on sound arguments, and on a thorough analysis of the law as it stands, including precedents of other international and regional human rights monitoring mechanisms in comparable cases. This particularly applies when it comes to positive obligations which form the centerpiece of large numbers of cases of cross-border environmental harm. International practice is still in a state of development when it comes to positive extraterritorial obligations. Germany considers that the authority and control test also applies in cases such as these. This calls for a direct, specific, predictable impact on the human rights of individuals abroad where the States fail to act. No such context applies if a State’s own resources are insufficient for it to resolve the situation forming the core of the human rights complaint. Germany’s point of view is that a mere “cause-and-effect” doctrine is unable to give rise to jurisdiction.

**I. Introduction**

**4.** Children, as agents of change, have made historical contributions to human rights and environmental protection. It should be recognized that children are able to act ~~Their status~~ as human rights defenders ~~should be recognized; and~~. Their demands for urgent and decisive measures to tackle the global environmental harm should be met and realized to the maximum extent.

Comment: This wording suggests that all children are “human rights defenders”.

**II. Key concepts**

**A. Sustainable Development:**

Comment: It is our view that a reference to the 2030 Agenda for Sustainable Development is missing from the description of the central underlying concepts. The Sustainable Development Goals present the three dimensions of sustainability (SDG 16), and make statements regarding an adequate standard of living. The reference to “pillars” is out of date, given that there is a need to describe the interactions, synergies and goal conflicts clearly within the dimensions. The Sustainable Development Goals should also be used to substantiate the State’s general obligations.

**D. Precautionary principle**

Comment: We would welcome it if the precautionary principle were to be used as standard. The current text also uses the term precautionary approach in some cases, and this makes the description less clear (paras. 15 and 76). The precautionary principle is more progressive, even if it has yet to be fully recognized at international level.

**III. Specific rights of the Convention as they relate to the environment**

**C. The right to education (arts. 28 and 29 (1) (e))**

Comment: We suggest that the process for enhancing environmental education and education for sustainable development, which was launched by UNESCO 15 years ago, as well as the transparency of the environmental impact of consumer goods and services (ESD), be incorporated. ESD constitutes the fundamental value underlying Goal 4, on education, and Target 4.7 goes into greater detail in this regard.

**F. The right of Indigenous children (art. 30):**

Comments:

* We welcome the **specific** discussion of the fact that **Indigenous children are affected**, and of the **contribution of Indigenous knowledge for climate protection and adaptation**.
* We recommend as follows, on the basis of **General comment No. 11 of the UN Committee on the Rights of the Child** **on Indigenous children**, and of the **study by the UN Expert Mechanism on Indigenous children**:
  + to include the **consultation** of Indigenous children as a decisive addition in order to refer to the specific consultation and approval rights of Indigenous peoples;
  + stronger wording in addition to *“impact assessments”* by referring to **specific protective measures** since Indigenous children suffer **irreparable damage** as a result of environmental damage, economic exploitation and the impact of climate change;
  + refer to the following in footnotes:
    - CRC General Comment 11 on indigenous children (2009);
    - Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) Study on the rights of the indigenous child (2021).

**G. The right to non-discrimination (art. 2)**

Comments:

* We welcome the fact that there is a differentiated discussion of the challenges faced by children in particularly vulnerable situations. In the interest of an inclusive gender-sensitive approach, in addition to the above groups, the present Draft should also take LGBTIQ+ children into account throughout, as they may be particularly affected by multiple discrimination.
* We hold the view that the focus on the Global South has not yet received adequate attention since no regional information is provided on “climate-vulnerable environments”. We therefore recommend including more clear-cut wording in this regard: “Especially children from the Global South are most affected by multiple forms of discrimination as well as exposure and vulnerability to climate and environmental hazards, shocks and stresses.”

**K. Access to justice and remedies (art. 4)**

Comment: We propose to make a distinction in the section between children as parties to the proceedings, and their legal representatives in such proceedings. It would otherwise be suggested that children were able to file lawsuits without having legal representation.

**62. Access to remedies for children**

Comment: We propose to stress more precisely the extent to which there are particular hurdles to children accessing remedies, for instance because they require legal representation in order to assert their rights in most cases. The preconditions described with regard to the admissibility of remedies do not apply only to children.

**64**.

**Regarding the material prerequisites for lawsuits**

“Child-sensitive procedures should be available for claims of ~~imminent or foreseeable harms, as well as past or current~~ violations of children’s rights. States should ensure that these are readily available to all children under their jurisdiction without discrimination […].”

Comment: The exceptions to the principle of being personally and directly affected should not be invoked without providing reasons. We are hence in favor of more general wording.

**Re transboundary harm**

Comment: There is a need for a more precise explanation and reasoning of the circumstances under which the States exercise sovereign powers in such cases (art. 2, paragraph 1). The Federal Government rejects a simple “cause and effect” interpretation of the term “jurisdiction”.

**65.** Complaint mechanisms should be ~~free of charge~~ not prohibitively expensive, safe, confidential, prompt, child-friendly and accessible.

Comment: What is meant by “complaint mechanism”? The Federal Government takes the view that it is not possible to derive from the Convention an obligation to provide free legal protection in court and out of court. The measures set out in para. 66 ensure adequate accessibility.

**66.** Children should have access to free legal and other appropriate assistance as provided for by national law, including legal aid and effective legal representation, and be provided the opportunity in accordance with international human rights standards to be heard directly in any judicial or administrative proceedings affecting them.

Comment: The Convention does not indicate a need for special arrangements for children regarding costs. It is permissible for national law to target individual need.

**67**.

Comment: The Federal Government does not consider specific regulations on the burden of proof to be either called for in terms of the Convention, or expedient. The existing regulations are also applicable to children, and permit a suitable equalization of the interests in the proceedings.

**69.** “Appropriate reparation include restitution, adequate compensation, satisfaction, and […] The application of novel forms of remedy is encouraged where appropriate and compatible with applicable procedural rules, such as orders to establish intergenerational[…].”

Comment: Germany presumes that this refers to the broad definition of reparations in terms of human rights. The envisioned measures would therefore certainly not need to be regulated under civil law on compensation.

**IV. The Right to a clean, healthy and sustainable environment**

Comments:

* We welcome the categorization of the human right to a clean environment in terms of legal dogma.
* We welcome the clarity with which the Committee derives obligations to take specific action vis-à-vis children from the human right to a clean environment (para. 73).

**V. General obligations of States**

**75. Regarding the recommendation to refrain from subsidizing specific products or activities:**

Comment: This is a positive obligation, and not a direct intervention on the part of States. The example should be placed under the “obligation to protect”.

**77**. The obligation to fulfil requires States to ~~combat negative societal attitudes to children’s right to be heard~~ create a societal climate conducive to fulfilment of children’s rights to be heard in relation to the environment, and to promote the meaningful and empowered participation of all children within the family, schools, communities and broader environmental decision-making.

Comment: The wording proposed by Germany does a better job of emphasizing the important point in the implementation of the States’ obligation. The act of “combat” leaves this open, and in the worst case could even be read as a call to intervene in other human rights.

**80**. States have ~~some~~ discretion to arrive at a reasonable balance between environmental and other social goals in light of available resources, including by determining appropriate levels of environmental protection. However, the leeway of States is limited by their obligations under this~~e~~ and other human rights Conventions. […]

Comment: Legislative discretion is always limited by constitutional restrictions and by limitations placed on such restrictions.

**81**. States should use platforms at all levels to collect and process data with respect to environment-related specifics on children’s rights taking due account of children’s right to privacy.

**F. Children’s rights and the business sector**

**90**. Businesses have responsibilities to respect children’s rights and prevent and remedy violations of their rights in relation to the environment, and States, in implementing their duty to protect children’s rights, have the obligation ~~States have the obligation~~ to ensure that businesses, including state-owned enterprises, meet those responsibilities across value chains.

Comments:

* The first addition clarifies the origin of the obligation incumbent on the States, namely the obligation to protect human rights. As noted above, it is significant in terms of the legal legitimacy of the GC that it convincingly explains the dogmatic derivation of the alleged obligations, and does not simply assert them.
* Second addition: It should be made clear that the duties of care with regard to human rights and children’s rights (as well as climate and environmental protection) apply along the entire value chain of a business enterprise (upstream and downstream activities without exception). The relevant global framework of the UN Guiding Principles on Business and Human Rights is very clear in this regard.

**92**.

Comment: This qualitative distinction when it comes to due diligence appears to be plausible, but is novel in this form. It seems to be more convincing to refer to the **risk-based approach** at this point, which has been fundamentally recognized, and which distinguishes between measures on the basis of their scope and of the likelihood of their occurrence.

**93**.

Comment: We ask to delete this para. The statement is not sufficiently connected with the above, and creates the impression of a more programmatic wish which can only be derived extremely indirectly in terms of human rights.

**VI. Climate change**

**A. States obligations, implementation and accountability**

**103.** States should incorporate children’s right to a clean, healthy and sustainable environment, ~~which includes a safe climate as a substantive element~~, in their national legislation, […]

Comment: Derogation from the language used in the UN Resolution with no reason provided as to why, and what exactly is meant by this.

**B. Adaptation**

Comment: With regard to adaptation, we welcome the discussion of the rights to water and sanitation, healthcare, food and education. At the same time, we recommend also including the **right to safe housing**, since the impact of extreme weather events and slow-onset processes poses a threat to livelihoods, thus attaching decisive importance to resilient housing.

**104.**

Comment: We propose to supplement information on adaptations to the farming and food systems in order to supply children with sufficient, appropriate food.

**105.**

Comment: We propose not speaking of “vulnerable children”, but of “children in vulnerable situations”, since this wording is less discriminatory.

**107.**

Comment: We recommend **integrating** not only extreme weather events, but **also gradual climate change and its impact**.

**D. Business and climate change**

**114-119.** Comment: We consider that the following further aspect needs to be integrated against the background of the Council’s General approach on the corporate sustainability due diligence directive, which was adopted on 1 December: Businesses should at least adopt a plan in order to ensure that the business model and strategy that they pursue are compatible with the transition to a sustainable economy, and with limiting global warming to 1.5 °C, in compliance with the Paris Agreement. If climate change was identified as the main risk to the business’ commercial activity, or as a major effect of its commercial activity, or should have been identified as such, the business should include aims to reduce greenhouse gas emissions in its plan.

**117**. States should incentivize investment in and use of zero carbon technologies, particularly by those that are State-owned, or that receive public finances from State agencies, for example by discontinuing financial incentives for activities and infrastructure that are not consistent with low greenhouse gas emission pathways. States should enforce ~~progressive~~ effective and appropriate taxation schemes and adopt strict sustainability requirements for public procurement contracts.

Comment: It is unclear in this context for which area and with what aims in mind a progressive taxation scheme is being called for. Germany already has a progressive income tax system. It would not be expedient to tighten this system owing to the negative incentives which this would cause in terms of employment and investment. The European Commission and the OECD consider that there is scope in Germany for reducing taxation on the factor labor, and for a shift in taxation towards taxes which have an environmental orientation. Therefore deletion and more general wording

**E. Climate finance**

Comments:

* We would like to point out that, as a matter of principle, decisions and determinations regarding international climate finance are not taken in the context of this General comment, but as part of the processes that are intended for this. This General comment can therefore not create any obligation to make contributions towards international climate finance, and nor is it possible to determine the orientation, emphasis or other factors regarding international climate finance.
* Climate finance is not only provided via bilateral channels (“States”), but also via multilateral organizations. One could hence recommend including the wording “climate finance providers”.

**120**. The principle of common but differentiated responsibilities and respective ~~capacities~~ capabilities in the light of different national circumstances indicates that developed States should cooperate with developing States and provide the necessary climate finance for climate action ~~that upholds child rights~~.

Comment: The correct, complete wording for the principle is ***“Common, but differentiated responsibilities and respective capabilities in the light of different national circumstances”***. The principle does not relate to qualitative elements of climate finance, so that it is imperative to delete the addition *“that upholds child rights”*.

**120**.

Comment: Climate finance is “new and additional” by definition. The wording that financial flows that support children’s rights are “new and additional” is hence redundant, and should definitely be deleted, since this might imply additional obligations to provide finance.

**121**. […] States should bridge the global climate finance gap, with a view to balanced financing ~~equal distribution~~.

Comment: It is important for mitigation and adaptation measures to be financed in a balanced manner. The internationally-agreed wording on this is ***“balanced financing”***, not *“equal distribution”*. We strongly urge that the internationally-agreed wording be used.