**Observations on the Draft General Comment on Children’s Rights and the Environment with a Special Focus on Climate Change**

The Holy See welcomes the opportunity to provide some observations on the Concept Note of the General Comment on children’s rights and the environment with a special focus on climate change.

At the outset, it should be recalled that, according to Treaty Law, recommendations contained in General Comments do not constitute legal obligations, and that new concepts and principles cannot be enshrined as legal obligations without amending the relevant Treaty, nor can they be deemed an authentic interpretation of the Treaties.

The Holy See’s considerations on draft Comment n°26 are threefold:

1. The Holy See welcomes the Committee’s desire to underline the dramatic impact of environmental degradation on children. On many occasions, the Holy See has drawn attention to the preservation of Creation.[[1]](#footnote-1) Pope Francis devoted the encyclical letter *Laudato sì,* published in 2015, to the social-environmental crisis (*Laudato sì,* point 139). In that text, addressed to “every person living on this planet” (*Laudato sì,* point 3), Pope Francis gave a comprehensive overview of the numerous challenges faced by our planet, “our common home” as he calls it. Amongst them, “climate change is a global problem with grave implications: environmental, social, economic, political and for the distribution of goods. It represents one of the principal challenges facing humanity in our day” (*Laudato sì*, point 25).

Regarding the preservation of the environment for future generations, Pope Francis writes, “[w]e can no longer speak of sustainable development apart from intergenerational solidarity. Once we start to think about the kind of world we are leaving to future generations, we look at things differently; we realize that the world is a gift which we have freely received and must share with others. (..) Intergenerational solidarity is not optional, but rather a basic question of justice, since the world we have received also belongs to those who will follow us.” The Holy Father then asks, “[w]hat kind of world do we want to leave to those who come after us, to children who are now growing up?” (*Laudato sì*, points 159 and 160).

In addition, Pope Francis notes that, “[a]n awareness of the gravity of today’s cultural and ecological crisis must be translated into new habits. In those countries, which should be making the greatest changes in consumer habits, young people have a new ecological sensitivity and a generous spirit, and some of them are making admirable efforts to protect the environment. At the same time, they have grown up in a milieu of extreme consumerism and affluence which makes it difficult to develop other habits. We are faced with an educational challenge” (*Laudato sì*, point 209).

The Holy See has also stressed the need to address these questions at the multilateral level, participating actively in the main international conferences on the subject. In 2021, for example, Pope Francis wrote to the participants of Glasgow’s COP 26, “[a]ll too many of our brothers and sisters are suffering from this climate crisis. The lives of countless people, particularly those who are most vulnerable, have experienced its increasingly frequent and devastating effects. At the same time, we have come to realize that it also involves a crisis of children’s rights (..) The young, who in recent years have strongly urged us to act, will only inherit the planet we choose to leave to them, based on the concrete choices we make today.”[[2]](#footnote-2)

As part of the Holy See’s concrete commitment to addressing climate change, it recently acceded to both the United Nations Framework Convention on Climate Change and the Paris Agreement. As the Cardinal Secretary of State said at the COP 27, held shortly after the accession, “the Holy See is dedicated to promoting education in integral ecology. Indeed, political, technical and operational measures are not enough, they must be combined with an educational approach that promotes new lifestyles (..) This is a time for international and intergenerational solidarity. We need to be responsible, courageous and forward-looking not just for ourselves, but for our children.”[[3]](#footnote-3) Cardinal Parolin added “by acceding to the Convention and the Paris Agreement, the Holy See is even more committed to moving forward on this journey together, for the common good of humanity and especially on behalf of our youth, who are looking to us to care for present and future generations.”

2. The Holy See wishes to recall that, according to rule 77 of the Rules of procedure of the Committee on the Rights of the Child, a General Comment is only an interpretative tool that aims at clarifying and explaining provisions of the Convention with a view to help the States Parties to implement those rights. Therefore, General Comments can never create new rights or obligations nor introduce in public international Law new terms or concepts that have not been agreed by States.

State’s concrete obligations regarding climate change are not enshrined in the CRC but are governed by other international legal instruments. In 1989, when the CRC was adopted, those specific instruments did not exist and, unfortunately, at the time there was little awareness of the problem. Therefore, attempting to introduce into the CRC framework, by way of interpretation, specific obligations contained in environmental treaties, such as the ones concerning climate change (point 102 of the Comment), would disregard a State Party’s understanding of what it consented to when it ratified the Rights of the Child Convention. This would violate the treaty law principles of free consent, good faith and *pacta sunt servanda*.

Another area where the Concept Note goes beyond the legal framework of the CRC agreed by the States Parties is the part dedicated to access to justice and remedies (points 62 and following). It purports to change the rules of legal standing in environmental proceedings, giving *locus standi* to children even if they do not fulfil the commonly recognised legal requirements to enjoy such standing. Moreover, it asks States Parties to create complaint mechanisms free of charge as well as free legal assistance to use those procedures. Such proposals perhaps might represent good practices, but are not among the obligations that States Parties assumed when they ratified the CRC.

The Holy See wishes to sound a note of caution concerning the risk that such broad use of General Comments poses to the certainty of law that, at the end of the day, may dissuade potential States Parties from ratifying new international instruments. In fact, States would not have any legal guarantee that the content to which they agree today, would not be modified in future by importing, through analogy or contagion, obligations contained in other treaties which they do not wish to ratify. States Parties are free to assume additional and new obligations, if they wish to do so, by adhering to new instruments. New obligations, however worthy, should not be imposed through a back door.

3. According to article 2 of the CRC, “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction”. The responsibility of the States is, therefore, dependant on the effective exercise of jurisdiction over the children to which the rights are granted. In international public law, the concept of “jurisdiction” is a mainly territorial. In that regard, Art 29 of the Vienna Convention on the Law of Treaties states, “Unless a different intention appears from the treaty or is otherwise established a treaty is binding upon each party in respect of its entire territory”.

It is within its own territory that a State exercises its sovereignty and where it can effectively observe its human rights obligations. Only in exceptional cases, can a State be held liable for events that did not occur within its territory, specifically when the persons involved were in a territory over which the State exercised effective control. The Holy See finds it particularly problematic that the Committee is attempting to extend the CRC obligations beyond the territorial jurisdiction of the States Parties. The decisive aspect for the extraterritorial application of the CRC is effective control of the territory where the children in question are located. In Joint General Comment n° 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and n° 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration of the Committee for the protection, it is acknowledged that, “The obligations of States parties under the Conventions apply to each child within their jurisdictions, including the jurisdiction arising from a State exercising effective control outside its borders “ (paragraph ).

Moreover, in accordance with the rules of international law, any attempt at implementing the CRC in the territory of other States could constitute a violation of the principle of non-interference in the internal affairs of other States.

In conclusion, the decisive point when it comes to exterritorial application of the CRC, is that jurisdiction exists only when there is effective control over that territory where the child is located. Situations where this link is missing, do not fall within the obligations assumed by the States Parties and, therefore, cannot be subject of the Comment. For instance, point 68 of the draft Comment that suggest the liability of a national company operating abroad and which, at the same time, violates children rights in another State, goes beyond that principle and, therefore, has no grounding in the CRC. In fact, children who are victims of these companies fall within the jurisdiction of the State where they live. Within the framework of CRC, the legal obligation to protect those children falls on the State of the territory. Of course, this legal principle does not have any bearing on the moral obligation to protect children or on legal obligations deriving from other sources of law. However, the Comment cannot extend the application of the Convention to situations that obviously do not fall within its scope.

**Conclusion**

While the Holy See recognizes the need to address the consequences of environmental damages on children, it also recognizes that General Comments cannot address this issue without going beyond the intended scope of the Convention. Therefore, rather than adopting a General Comment, the Committee should consider proposing to States Parties the negotiation and eventual adoption of a new additional Protocol. This would be a strong answer to this fundamental issue and provide a proper legal basis for any new obligations, guaranteeing, at the same time, legal certainty.

1. For instance in 1971, Pope Paul VI referred to the ecological situation as “a tragic consequence” of unchecked human activity. “Due to an ill-considered exploitation of nature, humanity runs the risk of destroying it and becoming in turn a victim of this degradation”. (Apostolic Letter *Octogesima adveniens* (14.5.1971, 21), <https://www.vatican.va/content/paul-vi/en/apost_letters/documents/hf_p-vi_apl_19710514_octogesima-adveniens.html>) [↑](#footnote-ref-1)
2. https://www.vatican.va/content/francesco/en/messages/pont-messages/2021/documents/20211029-messaggio-cop26-glasgow.html [↑](#footnote-ref-2)
3. https://www.vatican.va/roman\_curia/secretariat\_state/parolin/2022/documents/rc\_seg-st\_20221108\_cop27\_en.html [↑](#footnote-ref-3)