

Submission on draft General Comment No 26 of the Committee on the Rights of the Child on children’s rights and the environment with a special focus on climate change

Submission made on behalf of the Child Rights International Network (CRIN) - www.crin.org (15 February 2023)

1. CRIN welcomes the wide scope of the Draft General Comment and the manner in which it addresses the way in which the Convention on the Rights of the Child (CRC) applies in relation to the environment with a special focus on climate change.
2. In particular, we appreciate the recognition of the right to a healthy environment and its connection with the rights of children as well as the inclusion of the concepts of intergenerational equity within the General Comment. The substantial focus on access to justice for children in this context also provides particularly valuable guidance to States.
3. This submission makes recommendations with regards to specific elements of the Draft General Comment. With the exception of “cross-cutting issues” and “proposed additional content” identified in this submission, the headings used below follow the structure and titles included within the Draft General Comment for ease of reference.

Cross-cutting issues

Specifically affected groups

4. We welcome the acknowledgement throughout the Draft General Comment that environmental harm and climate change have disproportionate and distinct impacts for different groups of children. The Draft currently achieves this in part through an analysis of the prohibition on discrimination under article 2 of the CRC and in part by identifying specific groups of children as relevant throughout the text.
5. In places, however, particularly affected groups are identified in a way that is inconsistent or in a manner that may be read as identifying an exhaustive list of specifically affected groups.
6. For example, with regards to the right to education (para. 34) the Draft identifies the need to promote positive roles of girls, children with disabilities and Indigenous children in this context, but the list is provided as exhaustive. This application is valuable and welcome, but the presentation of the list as exhaustive may read as excluding other specifically affected groups for whom the recommendation would also be particularly relevant.
7. We recommend that where specifically affected groups are identified throughout the General Comment, that this is presented in non-exhaustive terms and that the language used is consistent across the analysis of different rights. Similarly, in places terminology could usefully be amended to inclusively address the range of groups affected by specific measures, such as replacing the term “hard-to-reach populations” with “marginalised and

systemically excluded communities” at paragraph 29 to reflect the structural exclusion of specific groups.

8. These changes could also be strengthened by moving the section on non-discrimination (current paras. 50 and 51) towards the start of Section III so that issues related to disproportionately or specifically affected groups are identified before the analysis of the application of other rights.

Exposure to toxic chemicals

9. We welcome the focus on children’s exposure to toxic chemicals which is addressed throughout the Draft General Comment. However, we would recommend the Committee to complement it to acknowledge that exposure can occur even before birth and that States should take all appropriate measures to prevent that exposure.

10. The definition of the child under the CRC does not include the developing foetus, however treatment during pregnancy can have an impact on the rights of the child once born. The Committee has been clear that: “The care that women receive before, during and after their pregnancy has profound implications for the health and development of their children.”¹ Accordingly, States have an obligation not only to consider the impact of exposure but to prevent children’s exposure to toxics, but also people of reproductive age.

11. We would recommend amending the paragraph 21 as follows:

- “Exposure to toxic pollutants even at low levels during developmental windows of increased vulnerability, **including before birth**, can easily disrupt maturational processes of brains, organs and immune systems and cause permanent disease, disabilities including behavioural impairments (...).”
- States should consistently and explicitly consider **and take all measures to prevent** the impact of exposure to toxic substances and pollution **before birth and** in early life. **Preventive measures should consider intersection with factors associated with poverty and other forms of marginalisation.**

Proposed additional content

Violence against children

12. We appreciate the focus that the Draft General Comment places on rights that are of particular relevance with regards to the environment and climate change and for which guidance to States is most valuable. The Draft does not, however, address the impact of environmental harm and climate change on violence against children.

¹ CRC General Comment no. 15: The right of the child to the enjoyment of the highest attainable standard of health, 2013. Available at http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-15_en.doc

13. Environmental harm and climate change are powerful drivers for violence against children.² The fast and slow-onset of climate disasters drive population displacement and migration, food scarcity and conflict. In the emergency conditions that follow the aftermath of climate change related catastrophes, sexual violence and trafficking increase. Environmental harm may itself also constitute a form of violence, most directly when environmental damage such as toxic pollution causes physical harm to children, but also as a contributor to structural forms of violence.

14. We recommend that the Committee include a paragraph within the existing Section III that addresses this issue. In particular, we urge the Committee to recognise that environmental harm and climate change increase the incidence of violence against children and can themselves constitute a form of violence. The particular significance of this recognition is that it makes the specific connection to the requirement of the CRC to take all appropriate legislative, administrative, social and educational measures to prevent all forms of violence.

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

F. Rights of Indigenous children (para. 49)

15. We add our support to the recommendation made by Indigenous groups³ regarding meaningful consultation and effective participation as well as free, prior and informed consent with regards to land rights.

16. We recommend that the Committee specifically acknowledge this concept with regards to undertaking measures to engage with Indigenous children and their families in responding to climate change. The current language which recommends these measures “as appropriate” risks understating the rights-based obligation.

17. With regards to displacement causing loss of Indigenous knowledge as Indigenous displaced children, we support the suggested additions recommended by the International Indian Treaty Council and Minority Rights Group International:

“The pervasive impacts of climate change on the food, water and eco-systems of Indigenous Peoples in all regions has a direct impact on Indigenous children’s health, development, cultures and ways of life. Indigenous children are disproportionately affected as a result of environmental degradation, pollution and climate change. States parties should closely consider the impact of environmental contamination and harm ~~for the significance of~~ on the traditional lands, territories, eco-systems, food sources as well as ~~and the quality of the natural environment while ensuring~~ the right to life, health, survival and development of Indigenous children. The specific impacts of climate change on ecosystems, invasive insect species are increasingly found in areas where they did not exist previously. The import and use of hazardous pesticides, including

² See, for example, End Violence Against Children, *How the Climate Crisis is Driving Violence Against Children - And What We Can Do About It*, 14 November 2022.

³ See submissions made by Minority Rights Group International and the International Indian Treaty Council.

those prohibited in the exporting countries, is increasing including in the lands and territories of Indigenous Peoples in many countries. In addition, climate change and resulting drought is causing diminishing water levels in rivers, streams, lakes and dammed reservoirs. This is causing increasing concentrations of heavy metals with direct and well documented negative impacts on child and infant development such as mercury, further contaminating traditional food sources such as fish, upon which many Indigenous Peoples rely.

Any adoption by States of Indigenous mitigation and adaptation strategies must respect Indigenous Peoples' right to free, prior and informed consent as well as Indigenous intellectual property rights. The ability of Indigenous Peoples to transmit their traditional knowledge to Indigenous children and future generations is threatened whenever Indigenous communities are displaced, including by projects intended for mitigation and adaptation. Therefore, States must protect Indigenous Peoples' customary land rights and prevent their displacement.”

G. Right to non-discrimination (paras. 50 and 51)

18. We welcome the identification of groups of children who face heightened barriers to the enjoyment of their rights in relation to the environment and the obligations of States to prevent discrimination in this context.

19. In the context of environmental harm and climate change, age discrimination is of particular relevance. The CRC does not explicitly identify these grounds of discrimination within Article 2, however, the list of prohibited grounds of discrimination within the Convention is non-exhaustive and does explicitly recognise discrimination on the basis of “other status”. The Committee has made recommendations regarding more than 60 grounds of discrimination within its Concluding Observations made to States,⁴ including age discrimination in its Concluding Observations made to the United Kingdom in 2016.⁵

20. Children are more susceptible than adults to environmental harm and climate change on account of their smaller bodies, ongoing physical development and particular behavioural habits. Children will also live with the consequences of environmental damage and climate change much longer than adults. Discriminatory age limits may also prevent children from taking part in environmental protests and allow for punishment if they do so.

21. We urge the Committee to recognise age as a ground of discrimination within the General Comment that is of particular relevance in the context of environmental harm and climate change.

K. Access to justice (paras. 62-70)

22. We welcome the substantial and detailed analysis of children's right to access justice in the context of the environment.

⁴ See UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, See 24 to 25.

⁵ UN Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, CRC/C?GBR/CO/5, 12 July 2016, paras. 21 to 22.

Extraterritorial jurisdiction

23. The Draft General Comment recognises the necessity of child sensitive procedures for child victims of transboundary harm resulting from States' acts or omissions within their territories, but does not explicitly address the jurisdiction of States Parties for this harm. The Committee on the Rights of the Child has addressed this issue in the case of *Sacchi et al v. Argentina* setting out criteria that apply to where extraterritorial jurisdiction is established in this context:

- There is a causal link between the acts and the omissions of the State and the negative impact on the rights of children located outside of the territory;
- The State exercises effective control over the sources of emissions;
- The harm suffered by the victims is reasonably foreseeable to the State at the time of its acts or omissions.

24. The jurisprudence of the Committee in this area provides clear guidance for the extent of States' extraterritorial obligations with regards to violations of the CRC in the context of the environment and climate change. By setting out this position in the General Comment, the Committee could usefully clarify the extent of the extraterritorial obligations of States under the CRC in this context in line with the Committee's existing jurisprudence.

Standing

25. We welcome the recognition within the Draft General Comment of the challenges posed to children trying to secure justice for violations of their rights, including through restrictive rules on standing (para. 62). Beyond this recognition, additional guidance on how States can overcome these challenges would provide valuable guidance within the Draft General Comment.

26. Specifically, we urge the Committee to recommend that States adopt rules of standing that enable children to challenge any violation of their rights under the CRC in the context of environmental harm or climate change. We also urge the Committee to recommend that States ensure that specialist non-governmental and civil society organisations with expertise in children's rights and environmental matters are enabled to bring cases within their expertise to protect children's rights in this context.

Remedies

27. We welcome the recognition within the Draft General Comment of the importance of the range of remedies necessary to address violations of children's rights in the context of environmental harm and climate change (paras. 68 and 69). In particular, the encouragement of novel forms of remedy that address the specific damage caused in the context of environmental harm and climate change is a significant contribution.

28. We urge the Committee to build on this guidance to address how remedies can be specifically tailored in this context. For example, the remediation of contaminated sites may be a necessary remedy in cases related to pollution or the release of toxic substances,

medical and psychological care may be necessary for individual child victims of environmental rights violations and national preventative policies and law reform may be necessary for large scale violations.⁶ In practice, courts have imposed a variety of remedies in environmental cases: damages and injunctions to stop activities or provide remediation (Uganda⁷), fines and charges, conditional sentences in conjunction with community service, imprisonment (Sweden⁸), upholding or overruling permits (New Zealand⁹), cessation of business activities (Tunisia¹⁰, Slovenia¹¹), and declaratory judgments and orders to compel the State to reduce its emissions (The Netherlands¹²).

IV. The right to a clean, healthy and sustainable environment (paras. 71-74)

29. We welcome the recognition of the right to a healthy environment within the Draft General Comment and the substantial content addressing its application. This recognition represents a significant development and we urge the Committee to give the content greater prominence by moving the relevant section forwards in the text. By addressing the issue before the right-by-right analysis that takes place at Section III, the text would appear directly after the key concepts and inform the way that the analysis of specific rights within the Convention is addressed within the Draft.

V. General obligations of States (paras. 75-97)

C. Access to information (paras. 84 to 86)

30. We welcome the guidance provided within the Draft General Comment regarding children's rights to access information. However, we recommend that the paragraphs addressing this issue be repositioned within the General Comment to ensure that it is considered alongside the other specific rights addressed under heading III. The current placement of this content under the "General Obligations of States" as opposed to "specific rights of the Convention as they relate to the environment" could be read to imply that the nature of right to access to information is distinct from the other specific rights addressed within the General Comment.

F. Children's rights in the business sector (paras. 90-93)

Business enterprises

31. The focus throughout the Draft General Comment on the application of the CRC insofar as it impacts businesses is welcome and valuable. We urge the Committee to specifically address how this issue intersects with children's right to access justice at paragraph 92 (suggested language highlighted):

⁶ See Report of the Special Rapporteur on the implications of human rights of the environmentally sound management and disposal of hazardous substances and wastes, A/HRC/33/41, 2 August 2016, para. 110(h).

⁷ See CRIN, Children's Access to Justice for Environmental Rights: Uganda, December 2022.

⁸ See CRIN, Children's Access to Justice for Environmental Rights: Sweden, October 2022.

⁹ See CRIN, Children's Access to Justice for Environmental Rights: New Zealand, forthcoming.

¹⁰ See CRIN, Children's Access to Justice for Environmental Rights: Tunisia, forthcoming.

¹¹ See CRIN, Children's Access to Justice for Environmental Rights: Slovenia, forthcoming.

¹² See CRIN, Children's Access to Justice for Environmental Rights: The Netherlands, forthcoming.

“92. States have obligations to provide a framework **and child-sensitive mechanisms**¹³ to ensure that businesses respect the rights of the child, through effective legislation, regulation and enforcement, as well as **child-sensitive** policy, remedial, monitoring, coordination, collaboration and awareness-raising measures. States should require businesses to undertake child-rights due diligence and identify, prevent and mitigate their impact on the environment and children’s rights including across their business relationships and within global operations. A stricter process of due diligence is required where there is a high risk that certain groups of children such as those working in hazardous conditions are exposed to environmental risks through business activities across supply chains. Immediate steps should be taken in the event that children are identified as victims of environmental impacts to prevent further harm to their health and development, and to **provide effective remedies and reparations to redress violations of the rights of the child ~~repair damage done~~, including by third parties such as business enterprises**¹⁴, in a timely manner.

VI. Climate change (paras. 98-123)

32. We understand the choice to dedicate a specific section of the General Comment to climate change. However, we believe that the General Comment would benefit from making more explicit links between this section and the rest of the text to clarify that the specific analysis of rights throughout the General Comment applies both to children’s rights and the environment in general, but also to climate change.

33. To ensure that the General Comment draws the necessary connections with legal and policy frameworks within the climate space, we also recommend that the Draft be amended to include a specific heading on “Loss and Damage” under Section VI. The three elements of mitigation, adaptation and loss and damage are essential aspects of States obligations with regards to climate change and addressing all three would be necessary to ensure the General Comment engages with existing climate change processes.

¹³ General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, para. 30

¹⁴ General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, para. 30.