

Contribution to Global Online Questionnaire

General Comment No. 26

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- Environmental impacts on children
 A children's rights approach to environmental issues
 A safe, clean, healthy and sustainable environment an integral part of the enjoyment of children's rights
 The role of children's rights in environmental protection

A safe, clean, healthy and sustainable environment as an integral part of the enjoyment of children's rights

• **How can States further strengthen protection of children from violations of their rights resulting from environmental harm caused by the business sector enterprises? At the same time complementing the general guidance given in CRC General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights? What gaps remain with respect to the business sector's own responsibilities towards the relationship between children's rights and the environment, and what concrete measures are required to address these?**

The States' children's rights (and more broadly, human rights) obligations (inside and beyond their borders) include the obligation to protect by preventing third parties from violating rights. In the context of the right to a safe, clean, healthy and sustainable environment, this obligation includes the obligation to regulate third parties such as business sector enterprises that engage in business activities causing environmental damage as well as climate change, through carbon emissions. The scope of regulation should address private sector enterprises that produce and sell carbon fuels (through extraction and commercialisation) as well as enterprises that operate in a carbon-intensive manner. The obligation to regulate should involve mandatory measures incumbent upon such business enterprises to ensure due diligence to prevent future harms as well as effective remedies for harms already caused. The Maastricht Principles on Extraterritorial Human Rights Obligations Principle 24 notes, for instance, "All States must take necessary measures to ensure that non-State actors which they are in a position to regulate ... such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures. All other States have a duty to refrain from nullifying or impairing the discharge of this obligation to protect." The right to a safe, clean, healthy and sustainable environment squarely falls within this purview.

The CRC Committee's General Comment 16 already signals the importance of business' own duties in relation to children's rights. In addition to due diligence duties as set out in the United Nations Guiding Principles for Business and Human Rights and given a children's rights specific context by the CRC Committee's GC 16, a clear duty to do no harm by contributing to the causes of climate change (namely, carbon emissions) should be incumbent upon the business sector. In *Milieudefensie et al v. Shell*, the District Court of the Hague noted: "the widespread international consensus that human rights offer protection against the impacts of dangerous climate change and that companies must respect human rights" (para 4.1.3).¹

The Court concluded that there was a "significant best-efforts obligation [to reduce the CO2 emissions of the Shell group by net 45% at the end of 2030 relative to 2019] with respect to the business relations of the Shell group, including the end-users; in which context [Royal Dutch Shell] may be expected to take the necessary steps to promote or prevent the serious risk ensuing from the CO2 emissions generated by the business relations, and to use its influence to limit any lasting consequences as much as possible" (para 4.1.4). This obligation has been read into the duty of care of the company, "in line with the broad international consensus that each company must independently work towards the goal of net zero emissions by 2050" (para 4.4.34).

As the District Court of the Hague reminds in this judgment, it is important to consider the judgment together with the Dutch Supreme Court's ruling in the *Urgenda*, which notes that States have obligations to prevent climate change in the context of their human rights obligations: "In the context of the positive obligation on the State under Articles 2 and 8 ECHR [on the right to life and the right to respect for private and family life] take appropriate measures to prevent dangerous climate change, [the Netherlands] target [of reducing carbon emissions by at least 25% in line with UNFCCC commitments] can therefore be regarded as an absolute minimum" (para 7.5.1)²

A safe, clean, healthy and sustainable environment as an integral part of the enjoyment of children's rights

- **How can the obligations that States have to address environmental harm violating children's rights beyond their national borders be more effectively upheld?**

The question of obligations beyond national borders, often referred to as extraterritorial human rights obligations, inevitably raises the question of (extraterritorial) jurisdiction, that is, whether and to what extent States have obligations beyond their territory. Jurisdiction in human rights law is designated as mandatory jurisdiction: it determines whether a State has human rights obligations or more crudely put, whether and under what circumstances a state must take legal action. This is in contrast to in public international law more generally, where jurisdiction designates permissible as opposed to mandatory boundaries of legal action. As a standard rule, States have obligations toward persons within their own territory. This rule, however, does not preclude obligations that extend beyond a State's territory.

¹ http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210526_8918_judgment-2.pdf

² <https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf>

In its admissibility decision in the case of *Sacchi and others v Argentina and others* of 22 September 2021,³ the CRC Committee has

1. acknowledged that climate change ‘raises novel jurisdictional issues of transboundary harm’ compared to the factual situations in which most of the case-law on extraterritorial jurisdiction has developed (10.4);
2. adopted the test for jurisdiction that has been adopted by the Inter-American Court of Human Rights in its Advisory Opinion on the environment and human rights, that is, that ‘children are under the jurisdiction of the State on whose territory the emissions originated’ ... if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emission in question’ (10.7)
3. accepted that ‘the collective nature of the causation of climate change does not absolve [a] State Party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location’ (10.10)

We would like to **endorse and lend our support to this approach**:

1. The environment in general and climate change in particular are indeed distinct and distinguishable situations in which questions of extraterritorial human rights obligations arise. These situations therefore necessitate a different approach that goes beyond the more commonly applied spatial and personal jurisdictional tests. Those seem to be primarily concerned with a physical long arm of the state; effective authority or control exercised by state agents over a territory or person.
2. A cause-and-effect test is the better test for these situations. We suggest that once the claimant(s) have made a *prima facie* case for causation, the burden of proof is on the State to rebut the causal link between its acts or omissions and the ensuing harm. This is a particularly suitable and effective approach for harms arising from environmental degradation and climate change as the scientific knowledge linking carbon emissions to environmental degradation and to the climate crisis is irrefutable and should not need to be reiterated in every case. It should therefore be incumbent upon the respondent state to prove its case.
3. States share a global responsibility: given that carbon emissions and their impacts through environmental degradation and climate change know no boundaries, States are responsible for harms caused by carbon emissions to children *whatever their location*. The foreseeable, continuous and transboundary nature of the environmental impacts arising from carbon emissions and the human rights violations resulting from these environmental impacts is the basis for this responsibility. Such an approach ensures that there are no vacuums in children’s rights (and human rights) protection. This approach has also been embraced by the Inter-American Court of Human Rights (IACtHR) in its 2017 Advisory Opinion 23 on The Environment and Human Rights, where the Court recognised that “the State obligation to respect and to ensure human rights applies to every person who is within the State’s territory or who is in any way subject to its authority, responsibility or control” (para. 73).
4. States have an individual responsibility: the collective nature of the causation of climate change does not absolve a State of its individual responsibility. As the Supreme Court of the Netherlands argued in the Urgenda case, each State must do ‘its part’ in reducing greenhouse gas emissions and in preventing dangerous climate change. What that part or share at a minimum implies can be inferred from the (degree of) international consensus that exists on

³ UN Doc. CRC/C/88/D/104/2019 of 11 November 2021.

the matter.⁴ A particular State's causal contribution to environmental degradation depends on to what extent it has enabled carbon emissions not only currently but also historically.

In order to ensure more effective implementation of State obligations with respect to addressing environmental harm, we also support the approach taken by former Special Rapporteur on human rights and the environment John Knox in his 2018 report on [Children's rights and the environment](#) (2018), which recognised "heightened obligations [of States] to take effective measures to protect children from environmental harm" in order "to satisfy their obligations of special protection and care, and to ensure that the best interests of the child are taken into account" (p.58). Given the irreversible and serious nature of the adverse impacts of carbon emissions, States should apply the precautionary principle and take effective, proportionate and appropriate measures to protect children and prevent harms. A component of the State obligation, which does not negate the direct obligations of business, is to regulate and monitor private businesses.

A child rights-based approach to environmental issues

● **What is the value of a child rights-based approach in addressing the environmental (climate) crisis and achieving sustainable development? What does this mean practically for the adoption of related laws, policies, programmes and practices?**

This contribution on the child-rights based approach focuses particularly on the principle of participation (Art. 12 CRC), and draws attention to the importance of establishing the guarantees for public participation of children as individuals and as a group.

In sustainable development, environment and climate change legislation and policy, children and youth (young adults) are often integrated into the same interest group of stakeholders (see in particular Agenda 21 (1992) which institutionalised the Major Group of Children and Youth UN sustainable development agenda). The merge of the two groups however has led to marginalisation of children in participatory processes at governance level, particularly in the international fora.

By contrast, the recent emergence of the youth global movement for the climate as well as a new wave of climate change litigations indicate that, although they may have different approaches and interests to tackle the climate crisis, due to the age-proxy and the intergenerational interests, these two age groups can act and advocate together. However, as examples show, even in the case of grassroots social movements, children may have fewer means and reduced access to various participatory platforms (real-life or virtual), and often face constraints to having their voice heard. These hurdles arise primarily due to their age (legally minor), or to adults' perception/consideration of children's vulnerability and immaturity.⁵

The CRC framework can and should reinforce the children's rights approach, and distinguish it from the political construction of youth, based on the legal and the social context:

1) The CRC considers children as persons who *do* have agency, thus provides citizenship entitlements to children, inter alia the participation in matters that concern them (public matters included), and

⁴ Supreme Court of the Netherlands 20 December 2019, *The State of the Netherlands v Stichting Urgenda*, ECLI:NL:HR:2019:2007, paras. 5.8, 7.2-7.3

⁵ Dozsa, K. (2021) *Environmental citizenship practices of children: Pathways of public participation in global climate change governance*. PhD Thesis. University of Antwerp, Faculty of Law.

freedom of expression and the freedom of assembly, etc. for the purpose to guarantee that children *can* enjoy certain freedom rights, despite the fact that they do not possess full citizenship status until they reach legal majority (in most countries, this is 18 years of age).

2) In the social context however, when children act as environmentally /socially /politically, etc.) *active* citizens, their possibilities are limited both by law and by the social context. See for example the online deliberative activities of the UN MGCY where children are not likely to have access or ability to join **digital deliberative spaces** and dialogues for protective regulatory reasons but also due to the language and knowledge which young adults may but children may *not* have; another example is the **school strikes**: despite the fact that it was actually children who initiated and mobilised a world-wide social movement for the climate by going on school strikes, children in compulsory education needed the consent from parents to participate in a strike, whereas young adult university students could act on their own right, independently.

3) Furthermore, children (in most countries) do not have **voting** rights, which in democratic systems is a right to directly participate in public affairs. The lack of voting rights is often an argument by/on behalf of children for taking different (alternative) pathways of public participation, such as protests, school strikes, public debates and litigation.

● **How can concrete guidance on environmental rights developed in other areas of international law inform the General Comment No.26?**

With regard to the legal guarantees to access to information, public participation and access to justice in environmental matters, the Aarhus Convention (1998) is the most important legal instrument that can inform the CRC framework, thus GC No. 26. Strengthening the existing children's rights framework with specific environmental rights instrument(s) could help reinforce the best interests principle (Art. 3 CRC) and hold duty-bearers accountable for not (or not appropriately) implementing it. This contribution takes the position that a normative instrument which entails access to information, access to justice in environmental matters would support the respect of the right to a meaningful public participation and hence, children's best interests in environmental/climate change matters. (See specific recommendations in the last section on concrete guidance on environmental rights)

Key building blocks recommended to be developed in the General Comment No. 26 as guarantees of children's environmental rights are:

1) The broadened text and interpretation of the **right to information**: Art. 13 should be extended to child-friendly environmental/climate change data, as well as to information on the right to participation and access to justice, with reference to the digital rights of the child;⁶

2) The **right to environmental and climate change education** (in particular Article 29 CRC, points b), d) and e))⁷ for all children on all levels (including early childhood education) in a holistic implementation into the general curriculum that respects the right to environmental/climate change information (point 1)), and the education on environmental rights of the child;⁸

⁶ The Committee on the Rights of the Child is drafting a General Comment on children's rights in relation to the digital environment. Source: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>; See also UNICEF (Brian K. & Little C.) The State of the Worlds Children 2017: Children in a Digital World. UNICEF. 3 United Nations Plaza, New York, NY 10017, 2017.

⁷ CRC Article 29. 1.(d)

⁸ Committee on the Rights of the Child (2017)

Environmental/climate change education should not be a separate subject of the curriculum, rather a holistically integrated content that is covered by all possible subjects taught. In a sense, environmental education is the most closely linked to (also global) citizenship education, and as such, it is best understood as it is applied to all areas of the curriculum,⁹ considering decentred deliberative citizenship¹⁰ and global citizenship education.¹¹

Therefore, we recommend that the Committee on the Rights of the Child takes into consideration the emerging need of **environmental and climate change education for all**, and incorporates it into the new General Comment emphasizing that a holistic environmental citizenship education on all levels of schooling should ensure access to information not only on environmental protection as such but on citizen- and public participatory rights as well as on the right to justice and remedy.

Further considerations for climate change education:

Education linked to **real-life** context: education on **mitigation and adaptation** in practice (focusing on all levels of implementation, particularly at local/community level)

Gender equality: Agenda 21 considers gender differences as regards vulnerability and accessing education, and call on States to take active steps to “expand educational opportunities for children and youth, including education for environmental and developmental responsibility, with overriding attention to the education of the girl child’.¹²

3) **Public participation** based on the decentred deliberation model which considers **alternative methods** of public participation (e.g. youth movements; the right to (school) strike and the freedom of expression and the freedom of peaceful assembly; the right to litigate/access to justice in environmental and climate change matters). The new General Comment should emphasise the conditions of meaningful participation that guarantees the fulfillment of all the three pillars;¹³

Public participation in formal governance settings (e.g. policy-making or legislative processes) should be insured at all levels. Taking into account the general international trends of differentiation between children and youth in public participation processes, the General Comment should provide recommendations to policy-makers to ensure the **possibility of ‘self-identification’ for adolescents** in the context of public participation in governance processes (particularly at international conferences) as to belonging to the group of children or youth;

4) **Access to justice** with a special attention to the status and role of children in climate change litigation and the jurisdiction of the CRC Committee (e.g. child-friendly justice in environmental matters that affect the child or children as a group);

Access to justice and remedy is a very important aspect of delivering justice for children’s rights violations resulting from the impacts of environmental degradation and carbon emissions.

International environmental law underscores the importance of access to justice for those affected by transboundary environmental harm. For instance, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)

⁹ Hart, R. (1996) Children as a bridge to sustainable development. In Satterthwaite, D., Hart, R., Levy C. et al. (eds) *The Environment for Children: Understanding and acting on the environmental hazards that threaten children and their parents*. Earthscan.

¹⁰ Hayward B. (2012) *Children, Citizenship and Environment, Nurturing a Democratic Imagination in a Changing World*. Routledge.

¹¹ Nishiyama, K. (2017) Deliberators, not Future Citizens: Children in Democracy, *Journal of Public Deliberation*. Vol. 13:Iss.1,p.1.

¹² Agenda 21. Section III, Chapter 25:14.

¹³ The three pillars that underpin the Aarhus Convention: access to information, public participation and access to justice.

requires access to justice to be provided “without discrimination as to citizenship, nationality or domicile” (Article 3(9)).

Meaningful access to remedy can only be guaranteed if remedy is prompt and effective. In the case of transboundary environmental harms, the International Law Commission’s Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising from Hazardous Activities underscores the importance of victims of such harms outside of a State’s territory having access to remedies “that are no less prompt, adequate and effective than those available to victims that suffer damage ... within the territory of that State” (Principle 6(2)).

In the specific case of children whose human rights are violated by transboundary environmental harms, effectiveness and promptness are even more crucial given the possibility of exacerbated and long-term (even life-long) impacts of violations on children. Furthermore, remedies for children’s rights violations should be child-friendly. In this regard, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice may provide inspiration by crystallizing the following components: accessible; age appropriate; “speedy; diligent; adapted to and focused on the needs of the child; respecting the right to due process; respecting the right to participate in and to understand the proceedings; respecting the right to private and family life; [and] respecting the right to integrity and dignity.”

5) **Effective monitoring/compliance system** extended to monitor not only states parties but transnational organisations and bodies as well. Such controlling and safeguarding mechanisms should effectively operate under the authority of the United Nations.

6) In addition, the General Comment should reinforce the implementation of a **feed-back mechanism** with regard to child participation in governance processes, which avoids the risk of tokenism: such feedback provided to children should be ‘sufficiently full, appropriately child-friendly, fast and followed-up in order to create the optimal conditions for adults to engage seriously and sufficiently with the views that they have sought or been given’;¹⁴

7) Finally, **child-friendly versions of any (new) instrument concerning the environmental rights of children**, including the aforementioned elements, should be publicly accessible and promoted through education and other child-friendly means of communication, digital tools included (e.g. online databases).¹⁵

If you have any materials you find useful to share, you can upload them.

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¹⁴ Lundy, L. (2018). In defence of tokenism? Implementing children’s right to participate in collective decision-making. *Childhood*, 25(3),

¹⁵ See an example of good practice in a recent child-friendly publication of the Report to the Human Rights Council on the rights of children and the environment (2018) (A/HRC/37/58). The Report is available at: <https://www.ohchr.org/en/issues/environment/srenvironment/pages/environmentandrightschild.aspx>; The child-friendly English version of the report is available at: https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/UNSREnvir_English.pdf (it is also available in 5 other languages)

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