



Submission of comments to the Committee on the Rights of the Child

on the draft General Comment No. 26 on children's rights and the environment with a special focus on climate change

On behalf of [University of Antwerp, Law and Development Research Group](#), we hereby submit our contribution to the Draft General Comment No. 26 (hereinafter: GC).

The present contribution is concerned with and limited to the following points of the Draft GC:

II. B. [Intergenerational equity and future generations](#)

III. C. [The right to education \(arts. 28 and 29 \(1\) \(e\)\)](#)

I. [The right of the child to be heard \(art. 12\)](#)

J. [Freedom of expression, association and peaceful assembly \(arts. 13 and 15\)](#)

V. C. [Access to information \(arts. 13 and 17\)](#)

VI. D. [Business and climate change](#)

In the following, the contribution will provide a short argumentation for amendments or completion of the GC's text for each point listed above. Then it will provide the recommended amendments to the text. These **modifications are highlighted in yellow** for an ease of reference.

II. B. Intergenerational equity and future generations

Argument for amendment: The Sustainable Development Goals (SDGs) states that ensuring intergenerational equity is a shared/collective responsibility of *all* persons, including the younger generations living today (para 53, SDGs). Considering that intergenerational equity is a responsibility of children too, States should provide adequate skills, opportunities and conditions for children to fulfil this duty. **Therefore, we recommend the following additional point to point**

II. B:

14. Intergenerational equity is a primary consideration in sustainable development, environmental and climate change matters. Paragraph 53 of the Sustainable Development Goals confirms that it is a shared/collective duty of all persons (including children) to ensure the future of humanity.¹ States should enhance the fulfilment of this collective duty through respecting the rights of children living today. States should empower children to live up to their share of intergenerational responsibility through access to information, education, the involvement of children in mitigation and adaptation policy-planning and

¹ "The future of humanity and of our planet lies in our hands. It lies also in the hands of today's younger generation who will pass the torch to future generations" (para. 53). In United Nations General Assembly. Transforming our World: The 2030 Agenda for Sustainable Development, Resolution 70/1, Adopted 25 September 2015; United Nations: New York, NY, USA, 2015



implementation as well as securing their right to access to justice in environmental/climate change matters.

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

Argument for amendment: The Draft GC devotes detailed attention to the right of education in the environmental/climate change context, and although not explicitly, it contains the requirement for environmental education for *all* (children) when it states that: *'All children should be equipped with the skills necessary to face expected environmental challenges in life such as disaster risks, including the ability to critically reflect upon such challenges, solve problems, make well-balanced decisions and assume environmental responsibility in accordance with their evolving capacities.'*² This type of (environmental) education should contain elements of environmental citizenship education and a holistic integration of environmental/climate change education into the overall citizenship education curriculum. **Therefore, we recommend the following amendments to point III. C:**

33. A rights-based environmental education should be ensured at all levels, throughout the entire period of schooling. It should be child-centred, child-friendly and empowering and pursue the development of the child's personality, talents and abilities, in line with article 29(1) (a) of the Convention. School curricula should be tailored to children's specific environmental, social, economic, and cultural contexts and promote understanding of the contexts of other children affected by environmental impacts. Curricula should reflect changing environments and new environmental science. Teaching materials should provide accurate, updated and age- and developmentally-appropriate environmental information. To be effective, environmental education should deal with the dynamics of both the physical/biological and socio-economic environment and human development, should be integrated holistically in all disciplines.

34. With regard to climate change in particular, all children should be provided age-appropriate skills to use and develop individual and group coping mechanisms to acquire, endure and process the information received. All children should be equipped with the skills necessary to face expected environmental challenges in life such as disaster risks, including the ability to critically reflect upon such challenges, solve problems, make well-balanced decisions and assume environmental responsibility in accordance with their evolving capacities.

35. Environmental education is a primary source of accessing environmental information. This includes knowledge about children's right to be heard, and to effective remedy in environmental or climate change-related matters through public participation/the right to be heard and access to justice. Environmental education should be therefore integrated in particular within the system of education on democratic values, human rights and citizenship. To ensure sustainability, States should enhance the active engagement of the child or children in environmental/climate change matters, policy planning and implementation. Educational measures should acknowledge the close interrelationship between respect for the natural environment and other ethical values enshrined in article 29 (1) of the Convention, including respect for human rights and the preparation for responsible life in a free society, and promote the positive roles of girls and children with disabilities in environmental protection and respect for the values and

²GC No. 26. III.C.



traditional lifestyles of Indigenous children. Moreover, they should link environmental with social, cultural and economic aspects, and have both a local and global orientation.³ Environmental education extends beyond formal schooling to embrace the broad range of lived experiences and learning.

39. States should also address the knock-on effects resulting from environmental impacts on children, such as the need for girls to leave school, **to be victims of child marriage or to face consequences of early marriage due to** the additional domestic and economic burdens in households facing environment-related shocks and stress.

III. I. The right of the child to be heard (art. 12)

Argument for amendment: A significant novelty of the GC is that it considers children as *active environmental citizens*. Active citizenship encompasses the (active) involvement in matters of public concern, in this case in environmental/climate change matters. In addition, the Aarhus Convention declares that public participation in environmental matters is a human right. It is regrettable that the GC in its current draft does not establish **public participation** as an environmental human right of children, as it would have clarified and filled a much debated hiatus in the children's rights framework as well as in environmental law instruments. The Committee has an enormous opportunity and role to set the ground for **children's right to public participation** in all matters of public concern affecting the child/children. Climate change and environmental degradation are matters that unquestionably affect children. In the current text, the GC consistently refers to Article 12 as 'the right to be heard', and avoids to define public participation as an environmental human right of the child/children. **We strongly recommend that the Committee considers the use of the term *public participation* and its forms specific to children with accepting the following amendments to the text:**

56. Children identify environmental issues as highly relevant and important to their lives. Children's voices have become a powerful global force for environmental protection and their views add relevant perspectives and experience with respect to environmental matters at all levels. Even from an early age, children can enhance the quality of environmental solutions, for example by providing invaluable insights into issues such as the effectiveness of early warning systems for environmental hazards. Children's views should be considered in the design and implementation of measures aimed at addressing the significant and long-term environmental challenges that are fundamentally shaping their lives. **The sustainability of measures that aim to protect the environment and the climate cannot be achieved without the active involvement of children.** Additional support and special strategies may be required to empower children in disadvantaged situations, such as children with disabilities, children belonging to minority groups and children living in vulnerable areas, to exercise their right to be heard. The digital environment has potential for consulting with children and expanding their capacity and opportunities to effectively engage on environmental matters, including through collective advocacy if carefully used paying attention to the challenges for many children to access the digital environment.⁴

³ Ibid., paras. 12-13.

⁴ CRC/C/GC/25, paras. 16, 18.



57. States should ensure that age-appropriate mechanisms are in place for public participation of children, with the minimum requirement that their views are heard regularly and at all stages of the environmental decision-making process for legislation, policies, regulations, projects and activities that may affect them at sub-national, national and international levels. For voluntary, respectful and transparent public participation, children should be provided with environmental and human rights education, age-appropriate information, adequate time and resources and a supportive and enabling environment. They should receive information about outcomes of environment-related consultations and feedback on how their views were considered and have access to complaints procedures and remedies when their right to be heard in the environmental context is disregarded.

The right to be heard through youth participation?

Argument for amendment: In the context of art. 12, the The Committee seems to recognise the hardships which children as individuals or as a group may face with regard to ‘the right to be heard’ or *public participation* in governance settings. In addition, the Committee refers to the practice in international governance to enhance youth participation instead of children’s involvement in international negotiations (e.g. United Nations conferences, COP meetings, youth conferences, etc.) In this regard, the Committee seems to accept the marginalisation of children, and at the same time abandons the notion of children as *active participants* when it writes: ‘States should also ensure that their obligations concerning children’s right to be heard are reflected in negotiations and implementation of instruments of international environmental law. Youth participation should be used to enhance child participation in environmental decision-making.’ It is not clear whether the Committee intends to identify older youth participants (typically young adults) in international participatory processes as *representatives* of children, and if so, on what grounds. It can be assumed that the current general political practice, which regards youth as proxy representatives of children and the future generations, is adopted by the Committee without examining the consequences of such representation on both children and youth. For example, priorities in youth policies and interests (such as employment; reproductive health issues, family and career support, etc.) may significantly differ from those of children. The Committee should be careful when suggesting that ‘youth participation should be used to enhance child participation’. This approach may result in further marginalisation of children in governance processes. Such recommendation should be preceded by an **impact assessment** to assess whether youth representatives and youth constituencies in the international sustainable development, environment and climate change governance (e.g. UN MGCY or YOUNGO) provide a suitable child-rights agenda and effectively represent children’s rights in participatory processes.⁵ Other forms of representative participation may be considered, for example through international safeguarding mechanisms such as child-rights envoy or ombudspersons. As **climate change** is a matter which particularly affects and concerns children **globally**, spaces (digital or physical), processes and conditions of *active and meaningful participation* of children should be also ensured at all levels of governance, including in the United Nations. **We recommend that the following amendments are made to the text:**

⁵ See Dozsa, K. (2020) ‘The inconvenient truths of the eco-generation - Mapping the Role of Children (and Youth) in the Global Climate Change Governance, in Czech, P., Heschl, L. et al. (eds) European Yearbook on Human Rights 2020. Available at: <https://intersentia.com/en/european-yearbook-on-human-rights-2020-45635.html>



58. At the international level, States and international organizations should facilitate the involvement of children's associations and child-led organizations or groups, in decision-making processes relating to the environment. States should also ensure that their obligations concerning children's right to be heard are reflected in negotiations and implementation of instruments of international environmental law.

59. The international organizations should guarantee the representation of children's views and interests in international environmental and climate change governance processes through safeguarding mechanisms (such as child-rights envoy, commissioners or ombudspersons) that are not identical to those of youth representation or youth constituencies in the international environmental/climate change governance system.

60. Climate change is a matter which particularly affects and concerns all children across borders. States and transnational organizations should ensure spaces (digital or physical), processes and conditions of *active and meaningful* participation of children at all levels of governance, including in the United Nations.

III. J. Freedom of expression, association and peaceful assembly (arts. 13 and 15)

Argument for amendment: Recent developments of grassroots environmental/climate change (but also other areas of) social movement activism of children world-wide suggest that children employ various means and forms of activities through which they practice their freedom of association and the right to peaceful assembly. These activities are often **child-specific** which the GC considers, however, it would be of use to expressly refer to **school strikes and school walk-outs** (or sit-in protests in schools, etc.) that require a child-rights approach in conjunction with the right to education. States should ensure that when children practice their environmental activism, these freedom rights are not violated or abused with reference to the duty of States to fulfil the right to education or protecting the child's/children's best interests. Therefore, **we recommend the following amendments to the text:**

61. Children's rights to freedom of expression, association and peaceful assembly should not be subjected to restrictions other than those that are lawful, necessary and proportionate.

62. Children who express their views or engage in public protests on environmental degradation, climate change and climate-related projects may face threats, intimidation, harassment or other serious reprisals. **School strikes and school walk-out actions should be recognised as a form of practicing freedom of expression, association and peaceful assembly.** States are required to protect the rights of environmental child rights defenders, including through the provision of a safe and empowering context for initiatives organized by children to defend human rights. States should undertake all appropriate measures to ensure that laws relating to defamation and libel are not abused by third parties to repress those children's rights, including through adoption and implementation of laws to protect child rights defenders in accordance with international human rights standards, raise awareness against stigmatization of activities and provide effective remedies for violations of their rights to freedom of expression, peaceful assembly and association.



V. C. Access to information

Argument for amendment: Access to information is a pillar of environmental human rights (as set forth in the Aarhus Convention).⁶ It serves as a precondition of *effective* public participation and access to justice in environmental matters. The right to environmental information relates to the possibilities of citizens, including children to act responsibly on behalf of the environment. Citizens with effective access to information in the environmental field have the power to act on possible breaches of environmental law resulting from activities harming our environment (through public participation and access to justice). Education and information provide the scaffolding for effective and sustainable child participation, building their capacity to innovate and adapt to environmental changes, such as the impacts of climate change. Considering the intersectionality between access to information and the right to environmental education, as well as the inseparable link between access to information and participation and access to justice in environmental matters, **the following additional points are recommended to include in the GC, in point V. C.**

87. Information should extend to information on the right to public participation/the right to be heard in institutionalised or empowered legislative and policy-making processes, public consultations and litigation as well as through initiatives and activities of the child or children as a group.

88. Information should entail knowledge about accountability of duty-bearers, to access to justice and to effective remedy in environmental/climate change matters that affect the child or children as a group.

VI. D. Business and climate change

Argument for amendment: The Third Revised Draft Treaty on Business and Human Rights entails provisions for the duty of Home States to ‘make available to one another, mutual legal assistance and international judicial cooperation to the fullest extent possible’ (see art. 12 Draft Treaty)⁷. Based on the wording of the Draft Treaty, **we recommend the following additional text to complement point VI. D of the GC:**

116. Home States should adopt measures to address current harm and foreseeable climate-related risks to children’s rights posed by business enterprises that have transboundary effects when there is a reasonable link between the State and the conduct concerned and should provide effective remedies for infringements.⁸ States should cooperate to ensure that business enterprises operating transnationally comply with applicable environmental standards aimed at protecting children’s

⁶ UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), 1998. Art. 2. Access to information.

⁷ The Draft Treaty on Business and human Rights.

<https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf>

⁸ CRC/C/GC/16, para. 38.



rights from climate-related harm. Home States should provide international assistance and cooperation with investigations, **judicial and other criminal, civil or administrative proceedings** and enforcement of proceedings in other States.⁹ **This should include accepting 'adjudicative jurisdiction against legal persons conducting business activities of a transnational character, including through their business relationships, if they are domiciled in the forum state'.**¹⁰

We hope the Committee finds our contribution useful and our comments will be taken into account when finalising the text of the General Comment.

Kind regards,

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⁹ Ibid., para. 44.

¹⁰ Art. 12.3 of Third Revised Draft Treaty on Business and Human Rights.