**German comments on the concept note for the *General comment on children's rights and the environment with a special focus on climate change***

**General remarks:**

* Germany welcomes the Committee’s efforts to address the impact of environmental degradation, loss of bio-diversity and climate change on children’s human rights. The international community is not on track to reach the climate targets of the Paris Agreement, namely holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels. This can lead to a serious threat for the enjoyment of human rights by future generations.
* The added value of the Convention of the Rights of the Child, including its monitoring mechanism in the field of the environment lies in the human rights perspective it brings to environmental protection. This human rights approach is essential. It can specifically highlight the repercussions of climate change events on individuals and may help in shaping mitigation strategies in a way that the human rights repercussions of climate change are addressed. However, it should be kept in mind that international human rights law and international environmental law are generally two separate legal regimes that follow their own logics and inherent limitations. Human rights instruments are not designed for taking over the role of an enforcement mechanism for instruments and principles of international environmental law. They cannot on their own address a global and complex problem such as climate change that requires political, democratically legitimized decisions on the allocation of resources and burden-sharing. This also entails that when recourse is made to principles and norms of international environmental law in order to interpret and flesh out human rights norms provided by the CRC, a high level of transparency with regards to the methodological underpinning of such cross-referencing appears desirable.
* In the further development of the General Comment (GC), we welcome the approach that the GC be guided by the science around climate change, including the IPCC Assessment Reports as reliable and quality assured source of information on the state of scientific, technical and socio-economic knowledge on climate change, its impacts and future risks, and options for reducing the rate at which climate change is taking place.
* We also recommend to consider UNFCCC’s [Action for Climate Empowerment](https://unfccc.int/topics/education-youth/the-big-picture/what-is-action-for-climate-empowerment) (ACE) agenda which plays an important role in climate education worldwide and which is based, among others, on Article 12 of the Paris Agreement.
* We agree that climate change may have severe adverse effects on the enjoyment and realization of children’s rights to health (including mental health), life, food, water and sanitation, education, housing, culture, and development among others. We recommend that the General Comment further examines how these rights may be concretely affected by climate change and also address the long-term impacts, including reduced opportunities and capacities for schooling, especially for young girls in all their diversity.
* In that regard, we suggest to adopt a gender-sensitive approach throughout the comment – women and girls are not only often more affected by the negative implications of climate change, but adaptation and mitigation strategies have shown to be more effective when women and girls are involved. Nonetheless, they remain often excluded from decision-making processes. These topics should be elaborated further.
* We suggest, if possible, to highlight the critical role of resilient infrastructure and services. Infrastructure and hospitals destroyed by extreme weather events, especially roads in rural areas, prevent childhood diseases from being detected or treated in good time or put expectant mothers and their children in mortal danger.

**Specific remarks on the “Scope”:**

* We welcome the Committee’s intention to also focus the discussion in respect of the four general principles: non-discrimination; best interests; the right to life survival and development; and the views of the child.
* With regard to Art. 12 UNCRC we recommend including a paragraph on global child and youth engagement and participation for protecting the environment and in fighting the climate crisis. Children are not merely “victims” of and suffering from environmental degradation and climate change, but they are important *agents of change* and actively engaged in claiming their rights. Their views need to be taken into account. For this reason, strengthening environmental education and education towards sustainable development, but also transparency with regard to the environmental effects of consumer goods and services should be adressed.
* The General Comment should focus on the interpretation of the UNCRC. We agree that other international legal instruments relevant to the interpretation of the UNCRC can be taken into account as part of a contextual interpretation of the Convention (see also above). For example, when considering children’s rights to access information, public participation and access to justice in environmental matters, instruments such as The Agreement of Escazú and the Aarhus Convention might be taken into account as part of a contextual interpretation of the UNCRC.In order to foster the comprehensibility and authority of the General Comment, the latter should strictly abide by the established methods of the interpretation of binding international human rights treaties and should clearly state and explain the methodological steps taken in construing the Convention.
* We recommend addressing the different dimensions of children’s rights in the context of environmental degradation and climate change, including negative obligations (obligations to respect) and positive obligations (obligations to protect) as well as the intertemporal dimension of human rights protection in this context. We invite the Committee to also consider the *Order of the German Federal Constitutional Court of 24 March 2021, 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20,* which examined these issues in the light of the German Constitution, when preparing the General Comment.
* The General Comment in our view should not specifically address aspects related to “sea-level rise and international law”, given that the International Law Commission currently deals with this topic in a comprehensive manner.

**Specific remarks on the “Objectives”:**

* We recommend to explicitly clarify States’ obligation to apply a meaningful children’s rights-based approach to mitigation and adaptation policies and measures (including climate finance) and what this approach entails.
* In the framework of climate change and youth climate action, we recommend setting a specific focus on the promotion and protection of the rights of children living in the Global South as well as their specific needs.
* We recommend clarifying how environmental policies and actions affecting children’s rights might be included in the periodic reviews under Art. 44 UNCRC.
* Germany supports the Committee’s intention to shed light on the concept of extraterritorial obligations in the specific field of children’s rights and the environment. In Germany’s view, the concept of jurisdiction contained in Article 2 para.1 of the Convention is a cornerstone of the Convention system that limits its extraterritorial application. A clear-cut delineation of States’ spheres of jurisdiction is essential for States’ ability to effectively allocate their resources in protecting human rights, especially in the context of environmental degradation. The scope of the Convention’s application being essentially territorial, each instance of extraterritorial application should be based on sound arguments and a thorough analysis of the legal situation, including precedents from other international and regional human rights monitoring mechanisms in comparable cases. This applies in particular with respect to positive obligations which are at the core of many cases of transboundary environmental harm. With respect to extraterritorial positive obligations, international practice is still evolving. In Germany’s view, the authority and control test also applies in these cases. This requires a direct, specific and foreseeable impact of State inaction on the human rights of persons abroad. Such a link is lacking when a State cannot on its own put an end to the situation at the core of the human rights complaint.