**Draft General Comment No.26 of the UN Committee on the Rights of the Child on**

**Children’s Rights, the Environment and Climate Change**

**Submission of comments** by Dr Christine A.E. Bakker, Visiting Research Fellow, British Institute of International and Comparative Law (BIICL, London), and Affiliated Researcher, Sant’Anna School of Advanced Studies (Pisa, Italy), 15 February 2023.

Dear Members of the Committee,

Following my participation in the oral ‘Thematic Consultations 2 on child rights and climate change’ held on 28 March 2022, I herewith submit my comments on the Draft General Comment.[[1]](#footnote-1)

Overall, the Draft General Comment provides a clear and comprehensive overview of the interlinkages between children’s rights, the environment, and climate change, and of the way in which the rights and obligations set forth in the CRC should be interpreted in the light of global environmental and climate-related challenges.

Regarding Section VI, ‘Climate Change’, I would recommend the Committee to consider the following suggestions:

1. **Para 100, regarding extraterritoriality and foreseeability:**

This paragraph reads:

“100. Under the Convention, States have obligations, including extraterritorial obligations, to respect, protect and fulfil children’s rights. The foreseeable adverse effects of climate change on the enjoyment of children’s rights give rise to obligations of States to take actions to protect against those effects, and to mobilize the maximum available resources for the adoption of measures aimed at mitigating its cause and effect and preventing further harm.”

This statement is very clear and straightforward. Arguably, an even more explicit, and more elaborate statement outlining the approach it has taken in *Sacchi a.o. v A. a.o.* regarding the extraterritorial obligations of States in connection with environmental harm including climate change, also referring to the Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights, would have further contributed to the clarification of the relevant obligations of States.

While there are different views among States and regional human rights courts about the scope of extraterritorial obligations for environmental harm, in this context, the element of *foreseeability* of potentially adverse effects on the enjoyment of children’s rights (and of human rights more generally) is, indeed, crucial. Courts increasingly accept that *climate science* offers insights into the foreseeability of climate-change related harm (both within a State’s territory and beyond), as the Committee has highlighted also in its Admissibility Decisions in *Sacchi a.o. v A. a.o.*

Therefore, I would suggest to:

* Add a footnote at the end of para 100, referring to the Admissibility Decisions in “*Sacchi a.o. v Argentina, paras 10.6 and 10.11,* *Sacchi a.o. v. Germany, paras 9.6 and 9.11, Sacchi a.o. v Brazil, paras 10.6 and 10.9, Sacchi a.o. v France, paras 10.6 and 10.11, Sacchi a.o. v Turkey, paras 9.6 and 9.11.*” In my view, citing all these admissibility decisions individually (even though the relevant paragraphs are identical) reinforces the point made by the Committee. Moreover, such a specific reference to the abovementioned paragraphs in which the Committee confirmed that the adverse effects on the enjoyment of the rights of the youth applicants was indeed foreseeable, significantly illustrates the Committee’s interpretation of this criterion.
* Consider adding two new (sub-)paragraphs after current para 100, essentially repeating the Committee’s views regarding ‘foreseeability’, as already expressed in the abovementioned Admissibility Decisions in *Sacchi a.o. v A. a.o.*:

“100a. In its Joint Statement on Human Rights and Climate Change[[2]](#footnote-2), the Committee has expressed that climate change poses significant risks to the enjoyment of the human rights protected by the Convention such as the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights. Failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.

100b. In light of existing scientific evidence showing the impact of the cumulative effect of carbon emissions on the enjoyment of human rights, including rights under the Convention,[[3]](#footnote-3) the Committee considers that *there may be situations in which* the potential harm of acts or omissions of States Parties to the Convention regarding carbon emissions originating in their territory *could potentially, in accordance with all relevant facts and circumstances,* be considered reasonably foreseeable.”

Note: in the suggested formulation of sub-para 100b, the original formulation used by the Committee in the Admissibility Decision in *Sacchi a.o. v A.* par 10.11 (and equivalent paras in the other decisions) has been adjusted to render it more general and ‘neutral’, emphasizing the specific facts and circumstances of each situation.

1. **Para 109**: The following sentence should be corrected:

“Insufficient progress in achieving international commitments to limit global warming to pre-industrial levels exposes children to the significant threats to their rights associated with greater concentrations of greenhouse gas emissions and correlative temperature increases.” *(Emphasis added)*

In fact, there is no international commitment to “limit global warming to pre-industrial levels”, but rather to “keep global warming within the limits set forth in the Paris Agreement”. The sentence should be corrected accordingly.

1. **Para 111(e):** This paragraph should, I my view, be rephrased. It now reads:

“(e) Mitigation measures should not rely only on negative emissions to remove carbon dioxide from the atmosphere. States should also take measures to reduce emissions now in order to support children in full enjoyment of their environment-related rights in the shortest possible period of time.”

However, in practice, most mitigation measures are already aimed at reducing emissions, and much less (and certainly not “only”) on measures to remove carbon dioxide from the atmosphere. Therefore, I suggest rephrasing it as follows:

“(e) Mitigation measures should not excessivelyrely on negative emissions by removing carbon dioxide from the atmosphere. States should step up their efforts to reduce emissions now in order to support children in theirfull enjoyment of their environment-related rights in the shortest possible period of time.”

Thank you for your consideration.

Sincerely yours,

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Dr Christine A.E. Bakker

1. These comments and views are expressed in my personal capacity, based on my academic research and publications in the fields of human rights, children’s rights, international environmental law and climate change, and climate litigation. For a list of these publications, see: <https://www.biicl.org/people/christine-bakker> [↑](#footnote-ref-1)
2. Joint Statement on ‘Human Rights and Climate Change’, CEDAW, CESC, CMW, CRC, CRPD, 16

   September 2019. [↑](#footnote-ref-2)
3. IPCC (2013) *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change;* IPC Special Report, ‘Global Warming of 1.5°C: Summary for Policymakers’, 2018; **and IPCC (2022) *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*: Summary for Policymakers** [↑](#footnote-ref-3)