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Committee on the Rights of the Child

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Dear Members of the Committee:

Thank you for the opportunity to provide comments on draft General Comment No. 26, on “children’s rights and the environment with a special focus on climate change.”

On the whole, the draft is very good. It has many excellent elements, including: its introduction, which highlights the statements of children themselves; its overall structure, which identifies the ways that environmental harm interferes with the enjoyment of a wide range of human rights and then clarifies the duties that States have to prevent and protect against such harm; its clear statement in para. 28 on the legislative and institutional frameworks that States should adopt and implement; the clear and straightforward statement that children have the right to a clean, healthy, and sustainable environment; and, in para. 73, the clear and very substantial list of actions that States should immediately take, which draws nicely on the series of reports by Special Rapporteur David Boyd.

I could continue to praise specific elements of the draft, but in the interests of time, I will instead focus on areas where I think the draft should be improved.

I have three primary comments, on future generations (para. 13); non-discrimination (paras. 50, 51); and climate change (part VI).

***Future Generations*** (para. 13)

The draft General Comment does not attempt to address the rights of future generations in any detail. **I agree that it should not do so.** The issues raised by attempting to assign rights to all future generations of humanity are well beyond the scope of this General Comment, and possibly beyond the scope of the Convention itself.

I strongly agree with the approach that the draft has taken instead, which is to emphasize that “discussions of future generations should take into account the rights of children who are already present on this planet and those constantly arriving.” (para. 13) Too often, discussions

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of future generations treat such generations as solely composed of people who have yet to arrive on this planet. In my opinion, a far more accurate and productive approach is to think of the people who will be alive as of a certain point in the future. This is the approach I suggested in my 2018 report to the Human Rights Council on children’s rights and the environment (UN Doc. A/HRC/37/58, ¶ 68), and that was taken by the German Constitutional Court in *Neubauer v. Germany,* its 2021 climate decision construing the German Basic Law. This understanding is more logical than characterizing future generations as only consisting of people who have not been born, and who therefore can never be specifically identified.

However, I would suggest that the General Comment make clearer that, in this sense of the term “future generations,” States already have obligations under the Convention to the children who are alive now, in relation to environmental harms that are occurring nowor that could be prevented by actions now*,* not only with respect to the current effect of those harms on the children, but *also with respect to the effects of such harms throughout their lives.* The *Neubauer* approach to the concept of future generations – that is, as people who will be alive at some particular point in the future, even if that point is only two decades from now – provides a sturdy platform for the Committee to emphasize that States have obligations to protect against actions nowthat will affect children throughout their lives.

While these obligations are not limited to environmental harms, environmental harms may provide the clearest examples of how the failure to take protective action nowwill adversely affect children for many years to come. Air pollution, water pollution, exposure to toxics, the loss of natural ecosystems, and of course climate change not only adversely affect children today; failure to take action to protect children from them now will blight their entire lives. To give a specific example, the foreseeable harms that will be suffered by people in the year 2100 as a result of rising global temperatures, if effective actions are not taken now to reduce carbon emissions, implicate the duties of States to protect the rights of young children alive now, because many of those children will be alive in the year 2100 – and, of course, in all of the years between now and then – and will therefore foreseeably (even inevitably) suffer those harms.

The section on future generations could make this point more clearly. It could also identify more rights, beyond the one that it mentions (the right to development), to make clear that States should take into account the medium- and long-term effects of actions (or inaction) on all of the rights of children, especially including their rights to life and health.

***Non-discrimination*** (paras. 50, 51)

This is the one section of the draft General Comment that I believe is simply inadequate. A vast amount of environmental harm is effectively discriminatory, as the Special Rapporteurs on the environment and on racial discrimination explained in great detail last year in two reports on sacrifice zones and racial sacrifice zones, respectively. (UN Doc. A/HRC/49/53; UN Doc. A/77/549). One of the hallmarks of marginalized communities all over the world is that they are forced to bear disproportionate burdens from environmental harm. The General Comment should do more to recognize and address that fact.

As other treaty bodies have made clear, including in General Comment No. 18 by the Human Rights Committee and General Comment No. 20 by the Committee on Economic, Social and Cultural Rights, prohibited discrimination includes not only direct, intentional discrimination, but also indirect, systemic discrimination. The Framework Principles on Human Rights and the Environment that I submitted to the Human Rights Council in 2018 emphasized that both types of discrimination can commonly occur in relation to the environment:

“In the environmental context, direct discrimination may include, for example, failing to ensure that members of disfavoured groups have the same access as others to information about environmental matters, to participation in environmental decision-making, or to remedies for environmental harm . . . .

Indirect discrimination may arise, for example, when measures that adversely affect ecosystems, such as mining and logging concessions, have disproportionately severe effects on communities that rely on the ecosystems. Indirect discrimination can also include measures such as authorizing toxic and hazardous facilities in large numbers in communities that are predominantly composed of racial or other minorities, thereby disproportionately interfering with their rights, including their rights to life, health, food and water. Like directly discriminatory measures, such indirect differential treatment is prohibited unless it meets strict requirements of legitimacy, necessity and proportionality. (UN Doc. A/HRC/37/59, Annex I, paras. 8, 9.)

The report emphasized that “to address indirect as well as direct discrimination, States must pay attention to historical or persistent prejudice against groups of individuals, recognize that environmental harm can both result from and reinforce existing patterns of discrimination, and take effective measures against the underlying conditions that cause or help to perpetuate discrimination. In addition to complying with their obligations of non-discrimination, States should take additional measures to protect those who are most vulnerable to, or at particular risk from, environmental harm.”

The two 2022 reports on sacrifice zones give many examples of how States are failing to meet their obligations to effectively address environmental discrimination, with disastrous, life-destroying consequences for countless communities. This General Comment provides an important opportunity for the Committee to emphasize that of all of the victims of environmental harm living in these sacrifice zones, children may well be the most at risk. Only saying, as the draft now does, that States “should collect disaggregated data . . . and implement special measures as required” (para. 51) is not nearly enough. The Committee should strengthen this language to make clear that States have obligations to effectively prevent, protect against, and provide remedies for environmental discrimination. And it should move up the treatment of discrimination much higher in the document – one possibility would be to list it first of the rights in Part III.

***Climate change*** (Part. VI)

I think that this section needs to be strengthened, and I generally endorse the detailed and persuasive comments of Special Rapporteur David Boyd on how to do so.

I would also underline that the IPCC Assessment Reports and the UNEP Emissions Gap Reports set out the emissions reduction pathways that the world has to take in order to reach the target (1.5-2.0 Celsius) that scientists – and, crucially, States themselves – have recognized is necessary to avoid climate catastrophe. Specifically, these reports and the UNFCCC Conference of the Parties at COP-26 in Glasgow, in 2021, stated that to meet that goal, States have to move to net zero emissions by mid-century. The General Comment should incorporate that consensus understanding.

In addition, the Committee should recognize that States themselves have committed to reducing their emissions to achieve the 1.5/2.0 targets, and that virtually every State has made individual commitments to that end. As a result, human rights bodies such as the Committee generally don’t need to say what specific actions each State should take to fulfill its fair share of responsibility for mitigation; *the States themselves have said what they need to do in order to reduce carbon emissions to levels that would catastrophic harm to human rights*.

The role for human rights bodies, then, is to hold States to their own commitments, including in their Nationally Determined Contributions submitted under the Paris Agreement. That the Paris Agreement itself does not make those commitments legally binding is beside the point; human rights law, including the Convention, says that States have to protect against massive environmental harm to human rights. That’s the relevant source of the obligation, as the Committee recognized in *Sacchi et al. v. Argentina et al.* The national commitments are critical not because they provide the legal basis for the obligation, but rather because they clarify its minimum content, on an individualized, State-by-State basis.

The Committee can and should make this much clearer in this section. For example, it could replace the following language in para. 111(c):

“States have an individual responsibility to mitigate climate change in order to fulfil their obligations under the Convention and international environmental law.” Mitigation measures should reflect each State party’s ‘fair share’ of the global effort to mitigate climate change, in light of the total reductions necessary to protect against reasonably foreseeable harm to children’s rights.”

And instead say something like:

“States have a responsibility to cooperate to reduce global emissions of greenhouse gases to level s necessary to avoid harm to children’s rights. To avoid catastrophic harm, States have committed collectively to “holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels.” (Paris Agreement, art. 2(1)(a).) In order to comply with the Convention on the Rights of the Child, every individual State has a obligation to contribute its “fair share” to this global effort. What share is fair will vary from State to State, but at a minimum, every State must carry out the commitments that the State itself makes in its Nationally Determined Contributions under the Paris Agreement. In addition, every State must continue to strengthen those commitments as necessary, to reflect its “highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.” (Paris Agreement, art. 4(3).)

***More specific comments***

In para. 16, on the right to life, I suggest replacing "intended or expected" in the fifth line with something like "that may foreseeably". That would be consistent with the better interpretation of the standard, and also with the draft's language in para. 17.

In para. 21, in the first line, consider saying “highly” rather than “remarkably.”

In para. 63, first line: I would replace "are" with "may be." Not all environmental cases are necessarily complex!

In para. 78, I would suggest strengthening the language on retrogressive measures, tracking more closely the applicable language from the Committee’s General Comment No. 3, on the nature of States Parties’ Obligations.

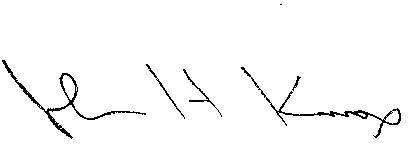
In para. 80, I note that my 2018 report to the Human Rights Council on children's rights and the environment has a more detailed elaboration of this point.

In para. 94, on international cooperation: International cooperation is vital in order to address other environmental challenges besides climate change, and I would suggest that you make that clear, by referring to other problems such as the loss of biodiversity and the spread of plastic pollution. Here again, David Boyd has proposed some useful language.

***Conclusion***

Again, thank you for the opportunity to contribute comments on this critically important General Comment, and more generally for your leadership in addressing the relationship of children’s rights to environmental protection. I would be happy to provide additional information if you have any questions or would like more detail on any points.

Very truly yours,



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