Committee on the Rights of the Child

Draft General Comment No. 26 on children’s rights and the environment

with a special focus on climate change

**COMMENTS BY THE GOVERNMENT OF CANADA**

The Government of Canada appreciates the work of the Committee of the Rights of the Child in monitoring States Parties’ implementation of the *Convention on the Rights of the Child* (the “Convention”) and the work on this new General Comment. Canada wishes to thank the Committee for the opportunity to comment on Draft General Comment No. 26 on children’s rights in relation to the environment with a special focus on climate change. These comments follow up on Canada’s comments on the Concept Note for Draft General Comment No. 26, submitted in December 2021. Canada welcomes constructive dialogue and engagement between the United Nations treaty bodies and States Parties on the content of General Comments.

Canada recognizes the independence and impartiality of the Committee and its role in supporting States to implement the Convention. Canada reiterates, however, that General Comments are capable only of providing guidance to States Parties in their interpretation of their obligations. The Comments do not create binding legal obligations in and of themselves, nor do they reflect an interpretation of the Convention that is necessarily agreed upon by States Parties. In addition, Canada would note that the Committee is not in a position to authoritatively interpret and clarify States’ obligations under other treaties, such as environmental treaties. At the same time, Canada does recognize that the Committee can be helpful in providing guidance to States on how they may consider their obligations under the Convention and in meeting their obligations under other treaties, and vice-versa on how States may incorporate consideration of their obligations under other treaties in meeting their obligations under the Convention. Canada does not necessarily agree with the Committee’s interpretation of States’ obligations under the climate change treaties but does appreciate the Committee’s reflections on these issues.

Canada appreciates the importance of having specific guidance on how to best respect and protect the rights of children in the context of the environment with a special focus on climate change, and it welcomes the Committee’s efforts in this respect. Canada recognizes that climate change and other environmental harms impact children’s rights and that children will experience more acutely the consequences of climate change as effects of climate change intensify. Canada believes that it is important for all countries to act now to reduce the repercussions of climate change for the benefit of our children and youth, and to comply with child rights obligations related to the environment. Canada further recognizes the important role that children and youth can play in addressing environmental harms, including climate change, and the need for governments to engage children and youth on these issues. Canada congratulates the Committee on its engagement with children in the development of this Draft General Comment.

Canada supports many of the recommendations in the Draft General Comment and considers that they can be useful in providing guidance to States on measures that can be taken to protect children’s rights in the context of the environment. At the same time, Canada is concerned that the Draft General Comment in some instances suggests obligations that go beyond what States Parties agreed to be bound to when adhering to the Convention. A General Comment should not endeavour to alter the plain and ordinary meaning of treaty provisions (pursuant to Article 31 of the *Vienna Convention on the Law of Treaties*), or to expand the obligations they contain beyond the scope of States’ consent.Canada recommends that the Committee clearly distinguish throughout this General Comment between obligations under the Convention and what the Committee considers to be best practices. Canada recommends reserving the verbs “shall” and “must” for when describing obligations, and using the verb “should” when describing best practices.

The specific comments below are not exhaustive, but rather highlight areas for potential further development and identify some areas of concern. Silence in respect of other areas does not constitute agreement with the Committee’s interpretation of States’ obligations.

***Comments concerning the extraterritorial application of the Convention***

*Paragraphs 62-70*Canada agrees with the Committee that cases involving environmental harms can be complex due to potential transboundary effects, as well as questions related to causation and cumulative effects. However, as expressed in Canada’s comments on the Concept Note on the Draft General Comment, Canada’s position is that the obligations of each State to respect and protect human rights are primarily restricted to each State’s territory. Except in limited circumstances, a State does not have extraterritorial obligations under human rights treaties, and thus does not have an obligation to protect the rights of persons who are entirely outside of its territory and over whom they do not have jurisdiction. To the extent that the Committee may be suggesting, at paragraph 64 of the Draft General Comment, that States are obligated under the Convention to provide remedies for transboundary environmental harms to children outside of their territory, and who are otherwise unconnected to that State, Canada strongly disagrees with such an expansive interpretation of the Convention.

Similarly, Canada does not accept the Committee’s suggestion, at paragraph 68, that States have obligations under the Convention to provide remedies for violations of children’s rights by business enterprises operating extraterritorially. Canada’s position is that host countries have the primary responsibility to protect and ensure human rights, including children’s rights, on their territory and are best placed to provide domestic legal remedies when human rights abuses occur. Canada does, however, expect all Canadian companies active outside of its territory to abide by all relevant laws, to operate transparently, to respect human rights and, in consultation with host governments and local communities, to work in a socially and environmentally responsible manner that is consistent with internationally respected guidelines on responsible business conduct, including the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

*Paragraph 100*At paragraph 100, the Committee makes a very general statement that “Under the Convention States have obligations, including extraterritorial obligations, to respect, protect and fulfil children’s rights.” It further asserts that “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” as well as to mobilize resources for mitigating causes and effects and preventing further harm caused by climate change. Again, Canada’s positon is that a State’s human rights obligations primarily apply within its territory where it has jurisdiction, subject to limited exceptions. The Convention provides in Article 2(1) that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction…” In Canada’s view, the Committee’s expansive interpretation of jurisdiction in paragraph 100 would impinge on well-established principles of State sovereignty. Canada therefore strongly disagrees that the adverse effects of climate change on the enjoyment of children’s rights necessarily give rise to extraterritorial obligations to protect against those effects and to mitigate harms.

***Comments concerning the right to a clean, healthy and sustainable environment***

*Paragraphs 71 and 72*Canada is supportive of the international momentum to highlight the connection between a clean, healthy and sustainable environment and the enjoyment of human rights, and supported General Assembly Resolution 76/300 on the human right to a clean, healthy and sustainable environment. At the same time, Canada notes that there is currently no common or internationally agreed upon understanding of the content of the “right to a clean, healthy and sustainable environment”, that this right is not recognized in United Nations human rights treaties and that it is not established as a matter of customary international law. Canada looks forward to working with others and exchanging information to support due consideration of what such a right may comprise, and what it may entail within the international human rights framework. Canada appreciates the Committee’s reflections and suggestions regarding the interpretation of this right. However, at this stage, the notion in paragraph 71 that this right is implicit in specific rights within the Convention or other human rights treaties is not established. Canada recognizes that the right to a healthy environment may be linked to the rights listed in paragraph 71, but cannot accept at this time that it is implicit in the rights suggested by the Committee. As the scope and content of the right is still very much under development, Canada also reserves its position on its substantive elements referred to in paragraph 72.

***Comments concerning the scope of the right to life under the Convention***

*Paragraph 17*The Committee states that State Parties must take precautionary measures to protect children against environmental harm which would impact their enjoyment of life with dignity. By invoking the concept of a “right to a life with dignity”, as well as suggesting that the right to life requires States to tackle structural and long-term challenges to address environmental conditions that may lead to threats to the right to life, the Committee appears to adopt a broad understanding of the scope of the right to life that is not supported by the text of the Convention or with the views of States that negotiated and ratified this treaty. Canada disagrees that the right to life – whether as recognized in the Convention or in other international human rights treaties – includes a right to a life with dignity to the extent that this could be read to encompass certain socio-economic entitlements, and recalls that economic, social and cultural rights impose a different standard of implementation of States Parties’ obligations, which is progressive realization. Canada further contends that the interpretation of the scope of the right to life cannot extend so far as to impose a positive obligation on States to protect children from the harm resulting from any reasonably foreseeable but distant threat. In sum, the obligations described in this paragraph go beyond Canada’s understanding of States’ obligations related to the right to life under the Convention and other international human rights treaties.

***Comments concerning the characterization of certain elements of multilateral environmental instruments, and reliance on these elements, throughout the Draft General Comment***

As noted above, Canada does not believe that the Committee is in a position to authoritatively interpret or clarify States’ obligations with respect to other treaties, such as environmental treaties. Canada disagrees with how the Committee has characterized certain references, concepts, commitments, and obligations in multilateral environmental agreements, particularly in the climate change context, where the wording used in the treaties has often been extensively negotiated. Indeed, any reformulation of these references, concepts, commitments, and obligations that have been so carefully negotiated can be polarizing and, in Canada’s view, is unlikely to help advance the aims of the Draft General Comment. In particular, when used in reference to climate change, Canada does not necessarily agree with how the Committee characterized, or used references to, among other things, international cooperation, equity, common but differentiated responsibilities, climate finance, assistance, high-income or contributor countries, green technologies and reporting obligations. Canada would suggest that the Committee use the exact wording found in the climate change treaties, including the exact terminology and any caveats contained therein, should it wish to refer to any of the commitments or obligations contained within those treaties. Canada would, of course, welcome suggestions from the Committee on how States’ obligations under the Convention may be considered in the context of undertaking and implementing climate change obligations and commitments.

*Paragraph 15 (Precautionary principle)*
The Committee asserts that “The precautionary principle requires States to take effective and proportionate action to prevent environmental harm to children…” While many States do accept and use a precautionary approach for several issues, including environmental ones, the description of precaution in paragraph 15 of the Draft General Comment goes beyond what is normally understood as the precautionary approach in the context of international environmental law. For instance, we refer the Committee to principle 15 of the 1992 *Rio Declaration on Environment and Development* where the principle is described as follows: “*Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation*.”

*Paragraphs 94-97 (International cooperation)*In the Convention, States have agreed to promote, in the spirit of international cooperation, the exchange of appropriate information in specific fields and to promote and encourage international cooperation in matters relating to education. States also agreed to strengthen and promote international cooperation with regard to specifics outlined in the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. They have not, however, committed to providing any level of international assistance. In paragraphs 94 – 97, Canada considers that the Committee has conflated two different bodies of law by using non-legally binding language from the preamble of the *United Nations Framework Convention on Climate Change* and presenting it as a human rights obligation for high-income States to provide technical and financial assistance to developing States.

In addition, within these paragraphs, the Committee either states explicitly or implies that the Convention should form the framework for States’ international mitigation and adaptation strategies, cooperation and financial support. While Canada agrees that the Convention should inform how States implement their climate change obligations and commitments and that States should not be breaching their obligations with respect to children’s rights when implementing their climate change obligations and commitments, Canada would note that the *UN Framework Convention on Climate Change* and the *Paris Agreement* are the agreed upon international framework for States to implement their mitigation and adaptation strategies, cooperation and financial support when it comes to climate change.

*Paragraphs 108-113* *(Mitigation)*Paragraph 108 of the Draft General Comment asserts that “historical and current major emitters have heightened obligations to take effective measures to contribute to mitigation efforts”. However, the Committee does not specify the source of these obligations, under either the Convention or international environmental law. Canada does not believe that these paragraphs provide an accurate reflection of concepts, obligations, and references as found in the climate change treaties. Canada is concerned that these paragraphs only retain some of the concepts from carefully negotiated texts and applies them in a way that does not reflect the climate change treaties. For example, the term “fair share” referred to in paragraph 111 is not an agreed upon term within the global climate change regime and cannot be found in the climate change treaties that States have agreed to be bound by. *Paragraphs 119-120 (Climate finance)*Similar to comments further elaborated on above, Canada is concerned with the reinterpretation of the obligations and commitments found in the climate change treaties as they appear in these paragraphs. In particular, Canada would disagree with the Committee’s characterization of the concept of “common but differentiated responsibilities” as referred to in paragraph 120. Canada moreover stresses that the notion of “common but differentiated responsibilities” is not recognized in international human rights law. Indeed, all States Parties to the Convention have equally committed to respect and ensure the rights in the Convention to each child within their jurisdiction, and to take all appropriate legislative, administrative, and other measures for the implementation of these rights.

***Conclusion***In conclusion, Canada reiterates its appreciation of the opportunity to review the Draft General Comment, and more generally its support for the work of the Committee in drawing attention to children’s rights in the context of the environment, and particularly with respect to climate change. Canada avails itself of the opportunity to renew to the Committee the assurances of its highest consideration.

Ottawa, Canada
24 February 2023