

CHILDREN'S RIGHTS AND THE ENVIRONMENT WITH A SPECIAL FOCUS ON CLIMATE CHANGE

OBSERVATIONS ON THE DRAFT GENERAL COMMENT NO. 26

Amnesty International welcomes the opportunity to provide comments and suggestions on the Draft General comment No. 26 on children's rights and the environment with a special focus on climate change.¹

GENERAL OBSERVATION/INTRODUCTION

Amnesty International suggests that the Committee refers to *the right* to a clean, healthy and sustainable environment throughout, starting from the introduction. We suggest that paragraph 5 is amended to reflect this recognition: "The **implementation of the right to a clean, healthy and sustainable environment forms the basis for the full enjoyment of a vast range of children's rights, while its violation poses risks of sweeping violations of other child rights.**" The introduction could clarify that the General Comment is anchored in the right of the child to a clean, healthy and sustainable environment.

SECTION I

In paragraph 8, we suggest adding "**Respecting, protecting, and fulfilling the right to**" before "...a clean, healthy and sustainable environment". We also recommend adding "peaceful assembly": "freedom of expression, **peaceful assembly** and of association".

SECTION III

RIGHT TO SURVIVAL AND DEVELOPMENT

In paragraph 22, we suggest stressing that environmental information and education should emphasize the protection of the rights to freedom of expression, peaceful assembly and of association. In the last sentence, we therefore suggest **replacing "leading a responsible life in a free society" with "avenues to influence and participate in environmental decision-making"**.

THE RIGHTS TO EDUCATION

We suggest amending paragraph 37 as follows: "States should ensure physical access to schools during severe weather events, especially for children in remote or rural communities, or facilitate alternative teaching methods [...] **while facilitating access to appropriate technologies to disadvantaged children [...].**"

THE RIGHT TO ADEQUATE STANDARD OF LIVING

In paragraph 43, we recommend adding "**biodiversity conservation**" at the end of the first sentence as another context where forced eviction and forced relocation of children have been reported.

Moreover, when talking about the importance of traditional land to Indigenous children, we recommend stressing Indigenous peoples' right to their lands and territories. We suggest adding: "Particular attention should be paid to the importance of traditional land to Indigenous children and the quality of the natural environment for their enjoyment of their rights to an adequate standard of living and culture, **and the fact that they, as members of Indigenous peoples, enjoy the collective right to their lands and territories.**"

We also recommend adding at the end of the paragraph: "**Indigenous peoples must not be relocated without their free, prior and informed consent, and Indigenous children should be able to effectively participate in consultations with the aim of obtaining such consent.**"

In paragraph 44, we suggest the Committee elaborates on the obligations of states to ensure the rights under the Convention to children affected by cross-border displacement and migration, building on a recent decision by the Human Rights Committee.² We suggest adding: "**States should ensure, including by amending domestic legislation, that relevant authorities**

¹ <https://www.ohchr.org/en/calls-for-input/2023/call-comments-draft-general-comment-childrens-rights-and-environment-special>

² Human Rights Committee, *Ioane Teitiota v. New Zealand*, adopted 24 October 2019, UN Doc. CCPR/C/127/D/2728/2016

take into account the risk of children's rights violations caused by the impacts of climate change when deciding admission and when reviewing claims for international protection. Governments should not remove children and their families to any place where they would face a real risk of human rights violations as a result of the adverse effects of climate change".

THE RIGHTS OF INDIGENOUS CHILDREN

In paragraph 49, we suggest the Committee elaborates on the reasons Indigenous children are disproportionately affected by environmental degradation, pollution, and climate change. For example: **"Environmental and climate change related harms can interrupt the transmission of traditional knowledge from generation to generation of Indigenous peoples; for example, when this transmission depends on different generations carrying out activities together, such as animal husbandry, collection of plants, or travelling along seasonally affected routes. The interruption of this transmission can obstruct the child's enjoyment of their right to their culture."** In addition, for measures that States must take, we recommend adding: **"States must take measures, in full consultation with Indigenous peoples, to support them to mitigate these impacts; where possible this should take the form of reversing such environmental harms"**.

THE RIGHT TO NON-DISCRIMINATION

In paragraph 50, we recommend adding **"racialised children"** to the list of children facing intersectional discrimination. This section could be further strengthened by stressing that States should take action to address structural causes of discrimination. The responsibility of States to address the underlying causes of vulnerability currently mentioned under paragraph 105 in the section related to climate change adaptation, would be important to include also in the section on non-discrimination. We also recommend stressing the obligation of States to ensure that response measures are not discriminatory and do not deepen inequalities.

THE RIGHTS TO EDUCATION THE RIGHTS OF THE CHILD TO BE HEARD

This section would benefit from adding examples, including in footnotes, on good practices on how children can meaningfully participate in environmental decision-making. We also recommend including references to the obligation of acting on children's views.

In paragraph 56, we recommend adding: **"Children's views should be considered and, as appropriate, acted on** in the design and implementation of measures aimed at addressing the significant and long-term environmental challenges that are fundamentally shaping their lives."

In paragraph 57, we recommend the following addition: **"States should ensure that age-appropriate mechanisms are in place for children's views to be heard regularly, considered and, as appropriate, acted on [...]"**.

In the last sentence of paragraph 56, we recommend deleting "if carefully used" and suggest the following amendments: **"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 and the effective exercise of the rights to freedom of expression, assembly and association in online and digitally mediated spaces [...]"**.

FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

Amnesty International recommends greater emphasis on these rights in the General Comment. The current formulation of paragraph 59 focuses on *not restricting* these rights but could instead begin with a positive affirmation of these rights as enabling a wide range of other rights. It may also be worth referencing the Framework Principles³ of the UN Special Rapporteur on the Environment (principle 5) and of the General Comment No. 37 of the Human Rights Committee on the right of peaceful assembly.⁴ In paragraph 16 of the latter, it is stated that "collective civil disobedience or direct action campaigns can be covered by article 21, provided that they are non-violent".

We welcome references in paragraph 60 to the risk of "threats, intimidation, harassment or other serious reprisals" and the emphasis on the importance of providing effective remedies for violations of the rights to freedom of expression, peaceful assembly and association. However, while the paragraph singles out abuse of defamation and libel by third parties, it overlooks a wider spectrum of obstacles or threats that children engaging in environmental activism may face. We recommend the inclusion of the following list in the General Comment: **the misuse of civil and criminal justice measures by States; unduly complex regulations and procedures that children may neither know about nor understand; arbitrary age limitations on participating in or organizing environmental actions (such as protests, strikes or spontaneous assemblies – but without attempting to exhaustively list the possible kinds of action that might be adopted); sanctions for publicizing forthcoming environmental actions (including online); sanctions imposed by schools (both public and private)**

³ Framework principle 5, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. HRC/37/59, 2018.

⁴ Human Rights Committee, General comment no. 37 (2020) on the right of peaceful assembly (article 21), UN Doc. CCPR/C/GC/37, 2020.

– and by other private actors; forms of surveillance that may chill or otherwise undermine the exercise of these rights; other laws that exert a chilling effect on the exercise of the rights to freedom of expression, assembly and association;⁵ policing interventions which fail to recognize the particular needs of children (for example, their potential susceptibility to particular types of weapons). In this regard, para 80 of General Comment No. 37 states that: ‘Training should sensitize officials to the specific needs of individuals or groups in situations of vulnerability, which may in some cases include ... children ... when participating in peaceful assemblies.’ It may also be useful to refer here to the forthcoming UNICEF paper on ‘*Policing assemblies involving children*’.

ACCESS TO JUSTICE AND REMEDY

In paragraph 62, we suggest adding the following: “Effective remedies should be available to redress violations, **including harms to children’s rights due to climate-induced loss and damage and failure of states to adopt affirmative actions to prevent them.**”

In paragraph 68, we recommend the following addition: “States should ensure that businesses provide effective grievance mechanisms for child victims, while they should have access to State-based **judicial and non-judicial** remedies.”

SECTION IV: THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

Amnesty International is concerned that the right to a clean, healthy and sustainable environment is addressed in a separate section to other rights. While we understand that this is due to the fact that the right is not explicitly mentioned in the Convention, we are concerned that presenting this right in a separate section could undermine efforts to consolidate global recognition of this right.

We also recommend the General Comment clarifies that the right to a clean, healthy and sustainable environment is essential to the enjoyment of all other children’s rights, not just those listed in paragraph 71.

The Committee should make clear that the list of actions included in paragraph 73 is not exhaustive to realize the right. We recommend the following amendment to paragraph 73(d): “Phase out the use and production of coal, oil and fossil (instead of “natural”) gas by investing in renewable energy, energy storage, energy efficiency **and other measures needed to reduce the energy demand** to address the climate crisis”. Reducing the global demand for energy through other measures besides energy efficiency (e.g. investing in efficient, accessible, and affordable public transport, supporting a circular economy) is essential to cutting emissions at the pace required to protect children’s rights and avoiding risk of human rights and environmental abuses associated with the mining of materials needed for the energy transition.

SECTION V: GENERAL OBLIGATIONS OF STATES

Amnesty International welcomes that this section opens with states’ obligation to ensure a clean, healthy and sustainable environment. As a general point, we believe the Committee should use the word “must” rather than “should” whenever it is stating states’ obligations in this section and the one on climate change.

In paragraph 77, we recommend adding reference to the *negative* obligation of states to refrain from unwarranted interference with peaceful assemblies, echoing General Comment No. 37 of the Human Rights Committee (para 23). It could also be helpful to stress the importance of providing support for families and training for teachers and others on the right to peaceful assembly.

We recommend the following addition to paragraph 88, on child rights impact assessments: “For example, States that have substantial fossil fuel industries should assess the social and economic impact on children of their strategies for a just transition **and ensure that all associated laws, policies and practices are child rights compliant.**”

We recommend the following amendments to the first sentence of paragraph 90, on children’s rights and the business sector, to align the General Comment with the UN Guiding Principles on Business and Human Rights: “Businesses have responsibilities to respect children’s rights and prevent, **mitigate, cease** and remedy harm to (Instead of “violations of”) their rights in relation to the environment.”

In paragraph 91, we suggest the following addition: “However, businesses can contribute greatly to the improvement of environmental conditions and work towards strong sustainability. **In addition to respecting children’s human rights**, the business sector therefore should play a key role in addressing environmental harm that interferes with the enjoyment of children’s rights”.

We welcome the reference in paragraph 92 to “States’ obligation to require businesses to undertake child-rights due diligence and identify, prevent, and mitigate their impact on the environment and children’s rights including across their business relationships and

⁵ For example, those facing the applicant NGOs in *Ecodefence and Others v Russia* such as the use of vague terms such as ‘political activity’ and the imposition of onerous or prohibitive requirements in relation to foreign funding.

within global operations”. However, we suggest adding “**cease**” in that sentence. We also recommend specifying that businesses have the responsibility to carry out human rights due diligence, which includes assessing risks to children’s rights, across their business relationships and global operations even in the absence of explicit legislation and regulation by States.

In the same paragraph, and throughout the document, we also recommend using “value chain” instead of “supply chain”, given that “supply chain” has a more limited meaning.

The section on international cooperation would benefit from some references to the actions of international cooperation needed to tackle other global environmental crises, such as the biodiversity and the pollution ones.

In paragraph 95, and throughout the document, we recommend adding “produced in a manner compatible with human rights” when referring to green technologies, to stress that the technologies used to reduce emissions should be respectful of human rights.⁶ We also suggest amending the following sentence: “The climate-related programmes of donor States should be rights-based, while States that receive international climate finance and assistance should allocate a substantive part of that aid specifically to **fulfil children’s rights, including directly to children**”.

SECTION VI: CLIMATE CHANGE

Amnesty International welcomes the specific focus on climate change of this General Comment. However, we believe this section should be strengthened to reflect the existential threat that the climate emergency represents for the enjoyment of children’s rights and the subsequent obligations of states to protect children’s rights in this context.

We believe that this section could start by expanding on why the climate crisis poses a massive risk to the enjoyment of children’s rights and explain that the urgency of the climate crisis gives rise to specific obligations on states derived from the Convention. Paragraph 98 should also explain that; while the General Comment includes a specific section on climate change, the previous parts of the document are also applicable to climate change.

In paragraph 101, we recommend adding: “States shall respect children’s rights, including by refraining from the adoption of measures that could worsen the cause and effect of climate change **and taking adequate measures to reduce greenhouse gas emissions and phase out fossil fuels**.” This addition is important to stress states’ obligation to take affirmative measures to reduce it. Moreover, it is crucial that throughout the section on climate change, the General Comment repeats the obligation of states to rapidly phase out fossil fuels

In paragraph 102, we strongly urge the Committee to reconsider referring to the goal of Paris agreement of limiting global warming to well below 2°C, while pursuing efforts to limit the temperature increase to 1.5°C. Since the adoption of the Paris Agreement, the Intergovernmental Panel on Climate Change has clarified the difference that limiting global warming to 1.5°C will make to peoples’ lives and ecosystems, compared with a 2°C rise.⁷ As the current draft states, more recently, the IPCC has also provided further evidence of the magnitude of impacts already occurring at the current levels of approximately 1.1°C global warming. Therefore, it is essential that the General Comment unequivocally calls on states to take actions to the full extent of their abilities to keep the global average temperature rise as low as possible and no higher than 1.5°C above pre-industrial levels.

To clarify states’ obligations in relation to climate change mitigation, we suggest amending first paragraph: “The Committee calls for collective accelerated actions to use the narrow temporal window of opportunities to mitigate the effects of climate change. **All states must take action to the full extent of their abilities to reduce greenhouse gas emissions within the shortest possible, both nationally and through international cooperation. Failure to do so represent a violation of children’s rights**.”. The last part of this sentence echoes a statement made by the Committee, together with four other treaty bodies, in 2019.⁸

In paragraph 101(b), we suggest clarifying the basis for each country’s “fair share”: “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 each state’s level of responsibility for the climate crisis and availability of resources to tackle it**.”

Considering that a reliance on negative emission measures might compromise global efforts to reduce emissions and that many carbon removal mechanisms can lead to human rights violations we consider important amending paragraph 111(e) as follows: “Mitigation

⁶ See for example, Afrewatch and Amnesty International, “This Is What We Die For”: Human Rights Abuses in the Democratic Republic of the Congo Power the Global Trade in Cobalt, AFR 62/3183/2016 (2016); Amnesty International, Time to Recharge: Corporate Action and Inaction to Tackle Abuses in the Cobalt Supply Chain, AFR 62/7395/2017 (2017).

⁷ IPCC, Special Report on Global Warming of 1.5°C, Summary for Policymakers, 8 October 2018, [pcc.ch/sr15/chapter/spm/](https://www.ipcc.ch/sr15/chapter/spm/)

⁸ OHCHR, “Five UN human rights treaty bodies issue a joint statement on human rights and climate change”, 16 September 2019, [ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E)

measures should not rely (delete “only”) on negative emissions to remove carbon dioxide from the atmosphere. Instead, States must prioritise (instead of “should also take”) measures to reduce emissions now, **particularly by rapidly phasing out fossil fuels**, in order to support children in full enjoyment of their environment-related rights in the shortest possible period of time.”

We believe paragraph 112 could be strengthened as follows: “States should (instead of “should consider”) discontinue financial incentives, **including fossil fuel subsidies**, or investments in activities and infrastructure that are not consistent with low greenhouse gas emission pathways [...]” The Committee could also acknowledge the obligation of wealthy industrialized countries with historical responsibility for the climate crisis and greater resources to take these measures quicker than others, based on the duty of international cooperation provided under article 4 of the convention.

In paragraph 114, “States should ensure that (instead of “incentivize”) business enterprises **address and integrate climate change concerns in their business operations, including by mobilizing vast financial resources, generate new human rights-consistent technologies and identifying, preventing, mitigating and accounting for children’s rights harms resulting from their contribution to climate change**” (deleting “exert influence throughout their operations and value chains in ways that prevent, mitigate and adapt to climate change, and strengthen the realization of children’s rights”). The paragraph should also clarify that such responsibilities apply even in the absence of clear domestic regulation.

In paragraph 115, we suggest adding: “States should require businesses, **including financial institutions**, to conduct environmental and climate impact assessments and child rights due diligence, to ensure that they identify, prevent, **cease** and mitigate negative climate-related effects of their actual and proposed actions on children’s rights...”

In paragraph 120, we recommend referring to article 4 of the Convention alongside the principle of common but differentiated responsibilities as the basis for developed states to provide the necessary climate finance to developing states. We also recommend that, besides calling for climate finance to be new and additional to other financial flows, the Comment also stresses the importance of the vast majority of climate finance to be provided in the form of grants, rather than loans, to avoid increasing developing countries’ debt and therefore reducing the resources available to fulfil human rights in the country.

Finally, we recommend adding a section dedicated to loss and damage to recognize states’ obligation to protect children’s rights by averting, minimizing and addressing loss and damage.