



in association with PUC
RIO

United Way Brasil

Draft General comment No. 26 Children's rights and the environment with a special focus on climate change

February 2023

Joint submission on behalf of Instituto Alana, Instituto Árvores Vivas, Centro Internacional de Estudos e Pesquisas sobre a Infância (CIESPI/PUC-Rio), Instituto da Infância (IFAN), Plan International and United Way Brasil.

The group welcomes the opportunity to provide comments to the Draft General comment No. 26 Children's rights and the environment with a special focus on climate change (GC26), and hope that our contributions are helpful to the Committee, especially on bringing specific and important issues regarding the reality of Brazil, Latin America and the Global South.

A) GENERAL COMMENTS ON THE DRAFT

1. General obligations of the business sector

- a) We suggest the inclusion of a section called "General obligations of the business sector", considering the relevance of its activities on environmental harm and climate change, the legal duty, the horizontal effect and the shared responsibility of businesses in ensuring a safe, clean, healthy and sustainable environment for children, especially considering the GC16 and the private responsibility fixed in article 3.1 of the CRC.
- b) It is also essential that the document establishes the **principle of non-discrimination in business practices on Chapter III, G (the right to non-discrimination)**, avoiding double standards and discriminatory actions, mainly considering developing countries. Also, business activity should consider the impacts over different stages of product and services development (extraction, manufacturing, packaging, selling, logistics, energy use, materials and emissions, marketing, reverse waste, circular project technologies, life cycle assessment with special focus on social and environmental impacts), and have special consideration with employees' families and communities where sites are based, and where services and product process, logistic and outreach promotes impacts

- c) Considering the private sector's obligation to respect human rights established by the UN's Guiding Principles on Business and Human Rights (2011) and major environmental disasters caused by companies' operations, there should be an increased responsibility for industrial sectors with higher environmental risk (such as mining, extractive, chemical, oil, gas, etc.) in identifying, preventing and mitigating their impacts on the environment and children's rights.

2. Indigenous children and children from local or traditional communities

- a) Children from traditional or local communities are more affected by environmental degradation and climate change. Thus, in addition to indigenous children, **it is necessary to include children from local or traditional communities, to recognize their need for protection as well the indigenous children.** Thus, it is suggested that, along with the express mention of "indigenous children", also be mentioned "children from local or traditional communities".
- b) Therefore, it is necessary that States take into consideration the reality and the demands of these children, **especially their connection with nature itself and the importance of their land to guarantee the right to culture and identity, it could be included in Chapter III, F (the right of indigenous children).**
- c) Also, the relationship between environmental and social impacts should be strengthened.

3. Major issues

- a) We don't see in the text mentions of main problems linked to the environment degradation such as: **deforestation, destruction of native forests, fires, noise pollution, contamination by solid waste, use of pesticides and illegal activities such as illegal gold mining.**
- b) We propose to the Committee to include in paragraph 73 of the draft measures such as the regulation of deforestation, as well as urging the most developed countries to avoid installing plants/activities that contaminate the environment in developing countries.

4. Kunming-Montreal Global Biodiversity Framework and Minamata Convention

- a) The General Comment 26 could embody the latest international agreement on biodiversity, namely the Kunming-Montreal Global Biodiversity Framework. The document brings measures from States with direct and indirect impacts on child rights, such as targets 2 and 3 (biodiversity conservation), target 12 (access to green and blue spaces), target 15 (businesses), target 16 (consumption), target 20 (transfer of technology), target 22 (children participation), target 23 (gender equity and girls), among others which are inclusive and universal for all children and adolescents regardless of their special needs, such as indigenous children. A possible suggestion is that a specific section on biodiversity is included in GC26, as it has been made for climate change in Chapter VI.
- b) In addition, the Minamata Convention, an important landmark for environmental and life protection in relation to mercury, could be incorporated, as illegal activities, such as gold mining, are polluting the water and food, contaminating children with severe impact on their health, especially impacting their nervous system.

5. Education for post-consumerism values

We suggest that the GC26 indicates the adoption of education for post-consumeristic, which causes direct pressure on consumerist values. It is essential to approach the spread of the materialist culture that ends up causing severe damages to the environment, especially from plastic waste. Thus, in addition to monitoring the practice of advertising aimed at children, the document could determine that States promote education against consumerism, especially in Chapter III, C. A human rights-based environmental education should be free from advertising aimed at children, and it is essential to bring up the discussion of consumerist values taught to children in school environments.

6. Loss and damage

Loss and damage is missing in GC26 and is a predominant issue when discussing child rights and climate change. Where adaptation measures are insufficient, States should take action towards mitigating loss and damage, especially affecting children from the global south and from least developed countries. Considering the commitment announced at COP27 establishing a loss and damage fund, chapter VI, D (Climate Finance) should emphasize the importance of developed countries providing funding for loss and damage.

7. The obligation of the States to promote the direct contact of children with nature

The document should contemplate, in a transversal way and especially in the themes of education and health, the obligation of the States to promote the direct contact of children with nature. Education in contact with nature, through green outdoor areas, natural playspaces and schoolyards, promote resilience and psychological healing, in addition to preparing children for responsible life in society. Other examples involving “nature based solutions” such as planting trees for water drainage and a comfortable micro-climate could be included.

8. Language

About the language, given the urgency and seriousness of the situation, it is important that the document be more incisive towards the States and companies, preferring the verb ”must” to ”should”, such as paragraph 81, in which States don’t should, but must “ensure the collection of reliable data” in regard to the right to access to information and the principle of transparency.

B) RECOMMENDATIONS ON THE INTRODUCTION, KEY CONCEPTS, OBJECTIVE AND RIGHTS

1. There are some key concepts missing, such as **nature conservancy, access to nature and free play**. A suggestion would be to adapt a section to "Key Principles", as it was made in General Comment 25.
2. It is important to avoid opposing technological and environmental development, as occurs in paragraph 5 of the first draft, but to consider that technology can also bring solutions and should be intertwined with social and environmental development, finding new economic models, such as bioeconomy.
3. We suggest adding on the scholar curricula the **study of indigenous and local communities history and culture, including different aspects of the history and culture** that characterize those populations, especially recovering their contributions in the social, economic, philosophical and environmental areas. Not only to respect their values, but to also learn with their ancient knowledge.
4. We notice **that there is no mention of a racial perspective** and that is a huge miss. **Chapter III, G (non-discrimination) should replace the term “minority groups” with another expression that better emphasizes the racial dimension of discrimination.** Climate justice is profoundly linked to **environmental racism**, considering that black people are the most affected by environmental harm and climate change. Black communities are often located in degraded areas or near pollution sites and have less access to environmental goods and resources such as land, water, energy

and green spaces. It estimates that the population most vulnerable to disaster risks in Brazil is formed by single-parent families headed by black women, with the presence of children (UNICEF, 2022)¹. There is no climate justice without racial justice.

5. “Climate refugee” is another possible suggestion for **a paragraph in the section “Right to survival and development”** as it is directly related to this right.
6. States must not only “consider” the impacts of pollution in early life, as pointed out in the draft, but have an obligation to mitigate them. **It could be included in Section B (The right to the highest attainable standard of health) prenatal exposure to toxic chemicals as well as prenatal care.** Also, indicate inequalities in an intersectional perspective in relation to unsafe drinking water, inadequate sanitation and household and outdoor air pollution that pose serious challenges to children’s health.
7. We suggest to **remove the expressions “unforeseeable”, “even if the scientific evidence is inconclusive” and “uncertain threats to health”, as in draft’s paragraph 15 and in paragraph 24,** as we have data of the direct threats to health and these are predictable risks and therefore must be mitigated.
8. Regarding the subject of evictions, **paragraph 43,** beyond the prior provision of adequate alternative accommodation, which should necessarily be housing, it is also necessary to point out to **ensure that children are not victims of police violence at the moment of eviction.** Ensuring protective measures, including social, legal and health assistance in these cases.
9. **The right to a clean, healthy and sustainable environment as a diffuse and collective right**
 - a) The diffuse and collective rights are those whose holders are the community and/or a group of people and not just a particular individual, transcending the notion of individuality. Diffuse and collective rights are related to an active and committed posture of the States for their guarantee, especially through the implementation of public policies. The importance of diffuse and collective rights consists of involving a maximum dimension of universality and collectivity, aiming at the concretization of a more solidary, egalitarian, and fraternal society. Thus, it is important to understand the right to a clean, healthy, and sustainable environment as a diffuse and collective right in order to allow groups, with unidentified individuals, to plead in cases of violations of this right and to ensure the maximum effectiveness of it, beyond the class actions and public interest litigation mentioned in paragraph 65. It is necessary that States adopt

¹ UNICEF. **Crianças, adolescentes e mudanças climáticas no Brasil.** 2022. <https://www.unicef.org/brazil/media/21346/file/criancas-adolescentes-e-mudancas-climaticas-brasil-2022.pdf>.

a legal interpretation of the right to a clean, healthy, and sustainable environment as diffuse and collective so that they can be collectively claimed by children or organizations and adopt adequate legal remedies to address collective complaints regarding this right.

- b) Still, it is very important the reinforcement in CG n. 26 that, according to OP n. 3, the admissibility of complaints to the Committee under the criterion of exhaustion of domestic remedies must always assess the due and reasonable time of the judicial process, which itself can be a violation.
10. We suggest including both outdoor and indoor air pollution to prevent child mortality, sometimes the text mentions only the household pollution.
11. In paragraph 78, we suggest **deleting the expression “without convincing justification”**, as States must respect the principle of non-regression in terms of human and environmental rights.

C) ADDITION, SUBSTITUTION AND DELETION OF TERMS AND EXPRESSIONS

1. We suggest the addition of 4 paragraphs, inspired by the GC n. 25:
- a) The business sector, including not-for-profit organizations, affects children’s rights directly and indirectly in the provision of services and products relating to their right to a clean, healthy and sustainable environment and climate. Businesses should respect children’s rights and prevent and remedy abuse of their rights in relation to their rights under the CRC. States parties have the obligation to ensure that businesses meet those responsibilities.
 - b) States parties should take measures, including through the development, monitoring, implementation and evaluation of legislation, regulations and policies, to ensure compliance by businesses with their obligations to prevent violations or abuses of children’s rights, including their right to non-discrimination by double-standards in environmental and climate policies, and to provide children, parents and caregivers with prompt and effective remedies.
 - c) States parties have a duty to protect children from infringements of their rights by business enterprises, including the right to be protected from all forms of discrimination and environment and climate malpractices. Although businesses may not be directly involved in perpetrating harmful acts, they can cause or

contribute to violations of children's right to life, health and development. States parties should put in place, monitor and enforce laws and regulations aimed at preventing violations of the right to protection against environmental and climate damage, as well as those aimed at investigating, adjudicating on and redressing violations as they occur.

- d) States parties should require the business sector to undertake child rights due diligence, in particular to carry out child rights impact assessments and disclose them to the public, with special consideration given to the differentiated and, at times, severe impacts of the climate and environment business practices on children. They should take appropriate steps to prevent, monitor, investigate and punish child rights abuses by businesses.
2. We suggest the addition in paragraph 3 of: "**in view of its transnational characteristic**"; "**and also combined by the disorderly densification, land occupation and urbanization systems**"; and "**noise pollution**".
 3. We suggest adding to paragraph 19: "[...] in the places where children live, study, play, work **and where they are treated (long term hospitalization or hospices)** and detrimental mental health effects linked to climate change."
 4. We suggest adding to paragraph 24: "inadequate or **no** sanitation, noise pollution and **contaminated food by agrochemicals**".
 5. We suggest adding to paragraph 25: "Climate change, pollution and toxic substances all represent key drivers of the **alarming food insecurity** [...]"
 6. We suggest adding to 28: "comprehensive and **inclusive**" e "where they live, study... **and where they are treated (long term hospitalization or hospices)**".
 7. The conditions mentioned in paragraph 29 should include the school environment, as a guarantee of the right to education.
 8. We suggest adding to paragraph 35: "[...] **recognizing the particular biogeographic, biomes, local and similar global interactions and ecological systems.**".
 9. We suggest adding to paragraph 36: "**This includes safe, inclusive and accessible walking and biking routes to school** [...]"
 10. We suggest adding to paragraph 36: "[...] Environmentally-friendly school facilities such as **edible gardens, orchards, spaces with native biodiversity representative of regional identity and culture, structures for the collection and storage of water for**

ecological use, mediating structures that value the development of motor skills, ample natural environments and spaces for free play, being, socializing and learning[...]”.

11. We suggest adding to paragraph 37: “[...] **and systems, with continuous monitoring of educators offering a support network to help them face the particular challenges they experience.**”.
12. We suggest adding to paragraph 42: “[...] pollution sources, radiation **or agrochemical** [...]”.
12. We suggest adding to paragraph 47: “[...] without discrimination **and inclusive way** [...]”.
13. We suggest adding to paragraph 47: “[...] **hospitals and health centers, libraries, community and cultural centers** [...]”.
14. We suggest deleting, in paragraph 52, “[...] **affecting children**” and a sentence “**Where a decision may have a major environmental impact on children, a more detailed procedure to consider their best interests is appropriate**”, in view of the fact that all environmental decisions primarily affect children.
15. We suggest adding to paragraph 73, (c): “**and intoxication with pesticides.**”; (e): “**and amplify accessible green areas, landscaped and native species.**”.
16. We suggest adding to paragraph 75: “[...] including business enterprises **and agrobusiness, in their actions in the use of natural resources; impacts on the handling of these resources in environmental and social terms; processing; product and service designs developed and delivered**[...]”.
17. We suggest adding to paragraph 86: [...] “**capacities of children, and particularities of their territories, identity and culture** [...]”.
18. We suggest adding to paragraph 91: “[...] **noise pollution** [...]”.