

15 February 2023

Re: Comments on Draft General Comment No. 26: “Children’s Rights and the Environment with a Special Focus on Climate Change”

Our Children’s Trust provides these comments regarding Draft General Comment No. 26 (Comment) on behalf of young people globally. Our Children’s Trust is a U.S. and Europe-based law firm dedicated to representing youth whose rights are being infringed by their government’s climate change-causing conduct.

We strongly advise the Committee on the Rights of the Child (Committee) to revise the Comment so as to adequately reflect the immense gravity of the climate crisis and the severe harms it disproportionately imposes on children. Although the Comment touches on these points, it fails to focus on the prevention of climate change harms as a top priority and to convey the urgent need for governments and private institutions to aggressively respond to current and ongoing violations of children’s rights. Additionally and importantly, several of its provisions unintentionally place the onus on children to help solve a crisis they had no role in creating, thereby exposing children to harmful ideations. Ultimately, the Comment offers limited substantive additions to the body of law and policy aimed at protecting children in the context of climate change and even, at points, results in the precise opposite by expressly harming children.

In particular, we respectfully suggest that the Comment incorporate the following seven priority recommendations. The Comment must

1. First and foremost focus on the harms the climate crisis is causing to children’s rights.
2. Particularly emphasize the need to stop the climate harms *already happening* to children in the present.
3. Include an accurate definition for best available climate science that does not reference the temperature targets set forth in the Paris Agreement.
4. Include provisions and examples that empower marginalized communities and hold States accountable for providing resources to mitigate and adapt to climate change.
5. Use assertive, precise language and clearly articulate the meaning and intention of every sentence.
6. Incorporate thoughtful and practical recommendations calling on States to take positive steps to combat the climate crisis.
7. Thoughtfully consider areas in which recommendations may conflict and acknowledge when tradeoffs and prioritizations need to be made.

The following sections provide further detail and clarification as well as corresponding recommendations for these seven priority recommendations.

1. The Comment must first and foremost focus on the harms the climate crisis is causing to children’s rights.

Key Recommendations:

- Prioritize Section VI by moving it to the beginning of the Comment.
- Incorporate a discussion of the fundamental harms, risks, and abuses climate change imposes on children’s rights into Section VI.
- Incorporate climate-specific elements and examples into every rights-focused subsection in Section III.

According to UNICEF, “The climate crisis is the defining human and child’s rights challenge of this generation, and is already having a devastating impact on the well-being of children globally.”¹ Yet, despite the universally agreed upon urgency of the issue, the Comment refers to climate change only sporadically as one of several equally potent environmental threats to children’s rights. *Although the Comment purportedly has a “special focus” on climate change, it first addresses States’ obligations in the face of the enormous injuries to global children’s rights caused by climate change on page sixteen of the twenty page document.* Given climate change’s fundamental position as both a dire stand-alone hazard for children’s rights and as an exacerbating force deepening all other environmental threats, it should be treated as the main subject matter of the Comment. To do otherwise represents a failure to recognize the grave climate-induced harms affecting the children of the world now as well as those projected to come. Not only should an in-depth discussion of climate change come earlier in the Comment, but ambiguous references to “virtuous circle[s]” (¶8) should be removed to make space for more information about climate change’s enormity as a threat given the irreversible tipping points it is poised to trigger in Earth’s climate system.

U.N. institutions have meticulously and repeatedly documented the wide array of grave harms and abuses that befall children due to States’ failure to immediately and proactively mitigate the climate emergency.² Nevertheless, climate change is hardly mentioned in many of the rights-focused subsections within Section III of the Comment, (¶¶16-70) including but not limited to the subsections touching on the right to life, the right to survival and development, and the rights of indigenous children. Clarifying statements and paragraphs outlining the outsized harms climate change will have on each of the identified rights must be incorporated into the final Comment.

2. The Comment must particularly emphasize the need to stop the climate harms already happening to children in the present.

Key Recommendation:

- Incorporate requirements for States to take proactive steps to urgently mitigate and prevent

¹ *The Climate Crisis is a Child Rights Crisis: Introducing the Children’s Climate Risk Index*. New York: United Nations Children’s Fund (UNICEF), 2021.

² See, e.g., *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, John Knox: Note by the Secretariat*, OHCHR, 37th Sess., UN Doc A/HRC/37/58 (2018); *Analytical Study on the Relationship Between Climate Change and the Full and Effective Enjoyment of the Rights of the Child: Report of the Office of the United Nations High Commissioner for Human Rights*, OHCHR, 35th Sess., UN Doc A/HRC/35/13 (2017).

ongoing climate change-induced children’s rights violations into ¶101 in keeping with State Parties’ obligation to “ensure the child such protection and care as is necessary for his or her well-being[.]” (CRC Art. 3(1)) and to “ensure to the maximum extent possible the survival and development of the child[.]” (CRC Art. 6(1)).

Climate change is harming children now. Although it will be important to take proactive steps to prevent even more substantial harms to young people moving forward, the primary concern in addressing the climate crisis is to mitigate and alleviate current violations of children’s rights in the present. Comment language requiring States “to ensure that their actions do not worsen the impacts of climate change” (¶101) set far too low of a bar for State action and imply that the current climate scenario – in which millions of children are being harmed by climate change – is tenable. ***Including language that sanctions the status quo in a comment seeking to protect children from the adverse effects of climate change is, in fact, harmful to children.*** State actions to combat the climate crisis must go beyond simply preventing climate harms from worsening; rather, they must aim to reduce injuries from climate change by taking immediate and uncompromising steps to follow technologically feasible and economically beneficial pathways to address the climate crisis³ and prevent further children’s rights violations now and into the future. The Comment must state this assertion clearly and emphatically.

3. The Comment must include an accurate definition of best available climate science that does not reference the temperature targets set forth in the Paris Agreement.

Key Recommendations:

- Remove the current description of “best available climate science” (¶102), which erroneously incorporates the Paris Agreement temperature targets.
- Incorporate the scientifically supported target of reducing atmospheric CO₂ concentrations to approximately 350 ppm as the appropriate standard for State response to the climate crisis in keeping with State Parties’ obligations to “contribut[e] to the elimination of ignorance and illiteracy throughout the world and facilitate[e] access to scientific and technical knowledge” (CRC Art. 28(3)).

The Comment’s recommendations and assertions must be based on the “best available science,” i.e., the most up-to-date scientific studies and information that i) maximizes the quality, objectivity, and integrity of information, including statistical information; ii) uses multiple peer-reviewed and publicly available data; and iii) clearly documents and communicates risks and uncertainties in the scientific basis for its conclusions. Contrary to the Comment, the goal stated in the Paris Agreement “to limit global warming to well below 2°C, while pursuing efforts to limit the temperature increase to 1.5°C[.]” is ***not*** based on the best available science; rather, those targets were politically negotiated by State parties to the UNFCCC in 2015.⁴ The IPCC has since released scientific reports analyzing those targets, but it has never derived them independently. Rather, the IPCC has expressly stated that “[w]arming of 1.5°C is ***not considered ‘safe’ for most nations,***

³ Damian Carrington, ‘No Miracles Needed’: Prof Mark Jacobsen on How Wind, Sun, and Water Can Power the World, The Guardian (Jan. 23, 2023) <https://www.theguardian.com/environment/2023/jan/23/no-miracles-needed-prof-mark-jacobson-on-how-wind-sun-and-water-can-power-the-world>.

⁴ Andrea Rodgers, et al., *The Injustice of 1.5°C–2°C: The Need for a Scientifically Based Standard of Fundamental Rights Protection in Constitutional Climate Change Cases*, 40 Va. Env’t L. J. 102 (2022).

communities, ecosystems and sectors and poses significant risks to natural and human systems for children and future generations.”⁵ Based on this conclusion and the scientific research of many prominent climate scientists, the temperature targets set forth by the Paris Agreement are definitively not protective of children’s rights and, therefore, must not be included in the Comment. In particular, references to the Paris Agreement temperature targets as “the best available climate science” (¶102) are factually incorrect and must be removed lest they undermine the Committee’s credibility.

Instead, the best available climate science indicates that the only way to ensure a stable climate system necessary to protect children’s rights is to restore Earth’s current energy imbalance by taking the necessary steps to return atmospheric CO₂ concentrations to approximately 350 parts per million (ppm) by the end of the century.⁶ This target, derived from the best available climate science, should be incorporated into the Comment as the correct, protective standard for mitigation efforts.

4. The Comment must include provisions and examples that empower marginalized communities and hold States accountable for providing resources to mitigate and adapt to climate change.

Key recommendations:

- Replace recommendations for behavior change by children with recommendations for behavior change and action by States in keeping with State Parties’ obligation to “ensure the child such protection and care as is necessary for his or her well-being[.]” (CRC Art. 3(1)) and to “ensure to the maximum extent possible the survival and development of the child[.]” (CRC Art. 6(1)).
- Remove all examples of disempowering and insensitive language that could be harmful to children.
- Incorporate recommendations for States to take action that urgently responds to the demonstrated financial and resource needs of marginalized communities in the face of the climate crisis in keeping with State Parties’ obligation to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the [CRC]” (CRC Art. 4).
- Incorporate recommendations as described in the comments submitted to the Committee by both Generations Together and the World Council of Churches, particularly as they relate to State accountability and the provision of climate-responsible financing and resources.

⁵ Joyashree Roy et al., *Sustainable Development, Poverty Eradication and Reducing Inequalities*, in *Global Warming of 1.5°C*, at 447 (2018), https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_Low_Res.pdf (emphasis added); see also, David Armstrong McKay et al., *Exceeding 1.5°C Global Warming Could Trigger Multiple Climate Tipping Points*, 377 *Sci. 1*, Summary (2022), <https://www.science.org/doi/10.1126/science.abn7950> (“[E]ven the Paris Agreement goal of limiting warming to well below 2°C and preferably 1.5°C is not safe as 1.5°C and above risks crossing multiple tipping points. Crossing these [climate tipping points] can generate positive feedbacks that increase the likelihood of crossing other [climate tipping points].”).

⁶ Karina von Schuckmann et al., *Heat Stored in the Earth System: Where Does the Energy Go?*, *Earth Syst. Sci. Data*, 12, 2013, 2029 (2020), <https://doi.org/10.5194/essd-12-2013-2020>.

Although all greenhouse gas-emitting human activity contributes to climate change, not all humans are responsible for the climate crisis. State officials around the world have repeatedly made decisions that massively contribute to the perpetuation of climate change despite knowing the enormous extent of resulting children’s right violations with ever-increasing scientific certainty. The Comment should emphasize that it is the behavior of these officials and of the high-level institutions they lead that must change, not the behavior of more marginalized members of society. For example, when discussing the State obligation to uphold children’s right to information access, the emphasis should be on providing children with the information necessary to hold those most responsible for causing climate change accountable rather than on providing children with information about adopting “appropriate lifestyle choices for sustainable development[]” or modifying their own “waste management and consumption behaviors[]” (¶85). *We cannot state strongly enough, that such recommendations, although well-intended, are patently misleading and unethical. While personal actions matter, they are not relevant to mention in a Comment focused on children’s rights. By underscoring children’s right to have access to information about sustainable choices and behaviors, the Comment inadvertently and inappropriately places the onus on children to act in defense of their rights and erroneously implies that children have the individual capacity to effectively mitigate harms from the climate crisis through their individual choices and behaviors. These unintended implications represent a profound miscarriage of justice and violate numerous State obligations including the duty to do no harm.*

In addition, sensitive consideration of the dignity and needs of marginalized communities is critical for enacting a just and equitable response to the climate crisis. The Comment should reflect this by eliminating and replacing demeaning phrases like “peasants” (¶50) and disempowering language such as “victims” with more sensitive terminology (¶¶64, 68, 92) and by acknowledging disparities in access to digital resources when highlighting the potential of “[t]he digital environment” to facilitate consultations with children (¶56). The Comment should also focus its recommendations on the need to hold States accountable for providing necessary financing and other resources to marginalized communities. For example, while it is certainly important to integrate “indigenous cultures and knowledge in mitigation and adaptation measures” (¶49) as appropriate, the first order concern is to ensure States allocate sufficient funding and resources for the mitigation and adaptation measures necessary to ensure the continued existence and thriving of Indigenous cultures.

5. The Comment must use assertive, precise language and clearly articulate the meaning and intention of every sentence.

Key Recommendations:

- Incorporate active language into declarations regarding State obligations, particularly replacing statements that States “should” take action with directives that States “must” take action in keeping with State Parties’ numerous *mandatory* duties under the CRC.
- Replace ambiguous statements in the Comment with more concrete and clear assertions.

The Comment should use strong, exact word choice to assertively convey its guidance. As currently written, the Comment incorporates too many passive verbs and tepid suggestions that may fail to command adequate attention. Recommendations for states to “explore options” (¶67), to “encourage the mass media” (¶86), and to “provid[e] information” (¶113) could be written much

more powerfully and effectively as recommendations for States to, respectively, “act,” “hold the mass media accountable,” and “allocate resources.” Similarly, language regarding “reasonably foreseeable” harms (¶111(b)) as well as references to the “precautionary principle” (¶15) are misplaced in the context of climate change given that the period for climate precaution has long since passed and climate harms to children’s rights are certain and imminent rather than merely “reasonably foreseeable.”

In order to maintain credibility and clarity, the Comment must also eliminate all textual ambiguity. For example, the Comment mentions several obligations of States, including the “obligation to respect” and the “obligation to fulfill” (¶77), without clearly specifying the source from which these obligations derive nor what abiding by them entails. The lack of transparency around such phrases could easily cause a reader of the Comment to call into question the veracity of other referenced obligations and assertions. The Comment should carefully and accurately provide context for all claims and statements to avoid this outcome.

6. The Comment must incorporate thoughtful and practical recommendations calling on States to take positive steps to combat the climate crisis.

Key Recommendation:

- Critically analyze all suggestions and indicated obligations for States and reframe them to be well-targeted, effectual, and actionable for the protection of children’s rights in the face of the climate crisis.

Given the urgency and severity of the climate crisis, the steps States take to combat climate change must be thoughtfully formulated and clearly articulated so as to be maximally effective in protecting children’s rights. Many as currently described in the Comment are not. For example, the Comment’s recommendations that impact assessments be conducted to assess potential harms to children are highly unlikely to contribute greatly to the protection of children’s rights unless combined with injunctive requirements for rights violations (¶¶53, 76). Furthermore, such impact statements may be impractical for States with capacity and resource restrictions particularly if they already have separate environmental impact assessment requirements in place. Similarly, the recommendation for States to lower the burden of proof on young people attempting to establish causation in climate lawsuits is misguided (¶67). Not only is lowering courtroom standards specifically for children infeasible pursuant to rules of evidence, it is also not necessary given the increasing ability of attribution science to definitively demonstrate the causal responsibility of particular actors for their contributions to climate change and the serious harms it imposes on children. These recommendations should be revised to take into account such pragmatic considerations.

Additionally, recommendations for States should be as practical to implement as possible. Several assertions in the Comment fail to abide by this principle. For example, the Comment declares that “States are also obliged to protect children from misinformation concerning environmental risks” (¶77) without acknowledging the immense difficulty involved in effectively stopping the spread of misinformation, providing any suggestions for how to do so, or recognizing certain States’

complicity in downplaying the scientific evidence of climate crisis.⁷ Similarly, the Comment indicates that States should “be transparent and avoid tracking challenges such as double counting[.]” (¶120) when providing climate finance without indicating any suggestions for how such “challenges” should be avoided.

7. The Comment must thoughtfully consider areas in which recommendations may conflict and acknowledge when tradeoffs and prioritizations need to be made.

Key Recommendations:

- Acknowledge the necessary tradeoffs implicitly required by States’ obligations and incorporate strategies for responding to conflicting priorities.
- Remove superfluous topics such as the evolution of international human rights law and the environment (¶¶9-10), the precautionary principle (¶15), child rights impact assessments (¶¶87-89), etc. to make more space for such tradeoff considerations.

States’ obligations toward children—let alone toward adult populations—may indicate differing courses of action at times. Recommendations for action will be much stronger if they acknowledge these conflicts and provide guidance for how to prioritize divergent considerations. The Comment must provide such guidance for all of its recommendations and obligation declarations. In particular, the Comment does not—but should—discuss best practices for assessing the best interests of the child related to “the full and effective enjoyment of all rights relating to a safe, healthy and sustainable environment” (¶53) in situations where, for example, the development of a renewable energy project may be in the best interest of children worldwide but may not be in the best interest of specific children living near a mine where materials needed for the renewable energy project are being extracted. As another example, the Comment calls for equal distribution of climate financing, (¶121) but there are situations in which equal distribution of funding is not equitable and the communities and countries with the greatest need should arguably receive a majority of climate funding.

While the Comment touches upon a number of important considerations regarding the grave harms the climate crisis presents to children, it fails to adequately underscore the urgency of the issue and, in some sections, unintentionally harms children. We implore the Committee to build upon this Comment by incorporating the comments and recommendations offered here. We are pleased to offer further resources and clarification upon request to Kelly Matheson at kelly@ourchildrenstrust.org and Paul Rink at paul.rink@ourchildrenstrust.org.

⁷ See generally, James G. Speth, *They Knew: The U.S. Federal Governments Fifty-Year Role in Causing the Climate Crisis* (MIT Press: 2022).