

Response to the call for comments on the draft general comment on children's rights and the environment with a special focus on climate change (unofficial translation)¹

I. Introduction to the Global Pact Coalition

The Global Pact Coalition (GPC) welcomes and thanks the Committee on the Rights of the Child (the Committee) for the draft general comment on children's rights and the environment, which highlights the intrinsic links between these two issues, as well as the call for comments. The GPC believes that international law should recognize the interconnectedness of human rights, children's rights, and environmental rights in order to ensure their complete protection.

The Global Pact for the Environment, a proposed international treaty drafted by a global expert panel of 100 lawyers, aims to enshrine environmental rights in international law. Alongside the Pact, an international coalition was created to promote the treaty among civil society. The GPC brings together more than 100 NGOs, some 200 academics, numerous businesses, and citizens from over 70 countries to foster a global movement for environmental rights.

The GPC is honored to present its commentary on the draft general comment on children's rights and the environment (General Comment No. 26) for the Committee's consideration and hopes that its expertise in international and environmental law may serve to substantiate the Committee's text.

II. Commentary on the draft general comment

1. General Remarks

The GPC warmly welcomes General Comment No. 26 and its contents, which unprecedentedly establish a link between children's rights, human rights, and environmental rights. The interconnectedness of these rights cannot be ignored: the right to a clean, healthy, and sustainable environment is the basis for actualizing myriad essential human liberties and should therefore be recognized universally as a fundamental human right.

As long as environmental degradation persists, children and future generations are comparatively more exposed than adults to the negative impacts of climate change and the

¹ The comment was submitted to the Committee on the Rights of the Child in French. The Global Pact Coalition thanks Kiersten Swaak for the translation in English of this comment.

degradation of their living conditions². Therefore, as proposed in General Comment No. 26, it is vital to integrate the right to a clean, healthy, and sustainable environment into children's rights.

We are pleased that General Comment No. 26 incorporates important environmental principles and concepts, such as the precautionary principle, the principle of common but differentiated responsibilities, and the concept of eco-anxiety, in addition to important specific rights, such as the right to be heard, or the right to access justice and remedies. Moreover, we welcome General Comment No. 26 for highlighting international cooperation and the role of States. Finally, we commend paragraph 62 for emphasizing the role of children in the fight against climate change ("children have been at the vanguard of several environmental and climate change cases").

The GPC wishes to impress upon the Committee the importance of recognizing the right to a clean, healthy, and sustainable environment as an essential right and for this to be reflected in General Comment No. 26. The Committee could further promote such a right, considering it has been recognized as a universal human right by the United Nations Human Rights Council³ (UNHRC) in October 2021 and subsequently the United Nations General Assembly (UNGA)⁴ in July 2022. In addition, the HRC adopted a resolution on the "rights of the child: realizing the rights of the child through a healthy environment"⁵ which recognized the need to ensure that children have an environment conducive to their health and well-being and the importance of preventing environmental harm in order to protect them effectively. This resolution urges States to actualize children's rights by recognizing the right to a healthy environment and to guarantee the rights of present and future generations by recognizing this right in their national legislation. The United Nations High Commissioner for Human Rights has also stated that "all children should enjoy... the certainty that the biodiversity of the natural world will remain for future generations."⁶ Recognizing the right to a clean, healthy, and sustainable environment as a core right in General Comment No. 26 would thus reflect the consecration of this will.

Thus, the GPC suggests that objective (a) of paragraph 11, which emphasizes the urgency of addressing the adverse effects of environmental damage, also recognizes that it is imperative and necessary for children to live in a clean, healthy, and sustainable environment. Such a right not only ensures that children live in an environment free from environmental harm but also serves as a foundation for fully enjoying their human rights.

2. Linear Analysis

² World Health Organization (WHO), 'Preventing disease through healthy environments: a global assessment of the burden of disease from environmental risks', (2018), <https://www.who.int/publications/i/item/WHO-FWC-IHE-17.01>

³ HRC/RES/48/13, 8 October 2021.

⁴ A/RES/76/300, 28 July 2022.

⁵ A/HRC/45/L.48, 7 October 2020.

⁶ A/HRC/43/30, 2020, par. 2 et 48.

a) Key Concepts, part A, paragraph 12

The GPC is pleased that General Comment No. 26 references sustainable development as the first key concept and outlines its three pillars: economic development, social development, and environmental protection. We believe it is appropriate to complement this definition with an emphasis on the importance of long-term implications, using, for example, the definition proposed in the 1987 Brundtland Report, in which sustainable development allows us to meet “the needs of the present without compromising the ability of future generations to meet their own needs.”⁷

Furthermore, the GPC suggests clarifying the definition of this key concept with the principle of integration, which strives to ensure sustainable development is taken into account in the decision-making process, thereby rendering it more effective. In accordance with principles 4 and 8 of the Rio Declaration, it entails integrating concern for environmental protection into all public policies, particularly those relating to economic development. Article 11 of the Treaty on the Functioning of the European Union recognizes that “environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development”. Finally, the Permanent Court of Arbitration has already recognized the customary nature of the integration principle in its award in the Arbitration regarding the Iron Rhine (“Ijzeren Rijn”) Railway⁸, and then in its partial award in the Arbitration regarding the Indus Waters Kishenganga 2013⁹.

b) Part B, paragraph 13

The GPC celebrates the recognition of the principle of intergenerational equity and the interests of future generations in paragraph 13. It is essential to consider the effects of today's politics on future generations in order to guarantee children's rights in relation to the environment. However, the GPC suggests adding the words "on current and future generations" in order to clarify the following sentence: "States to implement their obligations under the Convention, taking into consideration short-, medium- and long-term effects **on current and future generations** of actions related to the development of the child over time." It would appear difficult to distinguish solely between short, medium, and long-term, whereas the terms "present" and "future" generations are more precise. These were the terms chosen for Principle 1 of the Stockholm Declaration in 1972, in the annex to the Brundtland Report of 1987, in the Rio Declaration of 1992, by UNESCO in its Declaration on the

⁷ Brundtland Commission, “Report of the World Commission on Environment and Development: Our Common Future”, (1987),

<https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>

⁸ PCA, Award in the Arbitration regarding the Iron Rhine (“Ijzeren Rijn”) railway, 2005.

<https://pca-cpa.org/en/cases/1/>

⁹ PCA, Partial award in the Arbitration regarding the Indus Waters Kishenganga (Pakistan v. India).

<https://pca-cpa.org/en/cases/20/>

Responsibilities of the Present Generations Towards Future Generations of 1997 or in its Declaration of Ethical Principles in Relation to Climate Change of 2017.

This comment could also apply to Paragraph 106 of Climate Change, Part B. The Committee says adaptation measures “should target both short and long-term impacts,” without mentioning medium-term. The GPC suggests adding "current generations" and "future generations" here as well.

c) Part C, paragraph 14

The inclusion of the precautionary principle in General Comment No. 26 is remarkable. Although more widespread in environmental law, this principle is very innovative in many legal branches, such as children's rights law. The GPC proposes specifying the subject matter to which the precautionary principle should apply so that it is presented more as a principle of action. For example, Principle 15 of the Rio Declaration states that “the precautionary approach shall be widely applied **by States according to their capabilities**”. Similarly, the preamble to the Oslo Protocol to the Convention on Long-range Transboundary Air Pollution affirms the intention of the parties to “take precautionary measures”.

For these reasons, the GPC suggests clarifying that States should implement such a principle rather than stating that “the precautionary principle is required for the most advanced risk management”. A possible phrasing would be “as scientific knowledge about the environment evolves, States should implement the precautionary principle for the most advanced risk management”.

d) Part D, paragraph 15

The GPC welcomes the Committee's willingness to devote this section to the precautionary principle, thus placing it among the principles necessary for children's rights. Unlike the prevention principle, the precautionary principle applies in the event of scientific uncertainty, and it would therefore be interesting to distinguish between the precautionary and prevention principles in this paragraph.

Rather than defining the precautionary principle as useful for "assessing whether a harmful activity is necessary for achieving broader goals," the GPC suggests defining it as applicable in situations when the effects of an activity cannot be assessed with scientific certainty. One could use the definition of the precautionary principle established by the Rio Declaration in Principle 15: “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”. The United Nations Framework Convention on Climate Change itself states that "the Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures...".

The last sentence of this paragraph introduces "goals that prevent environmental harm"¹⁰. The GPC believes it could be useful to define the prevention principle after this sentence. It would be appropriate to use the wording found in Principle 2 of the Rio Declaration, which states that "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

e) Specific rights of the Convention with respect to the environment, Part H, paragraph 55

As General Comment No. 26 points out, it is necessary to recall that the interests of the child must be given primary consideration in all environment-related decision-making. However, we suggest adding the terms "precautionary principle" and "sustainable development" in paragraph 55, as potential conflicts between the interests of the child and other interests must be resolved on a case-by-case basis while respecting the key concepts identified in Part II.

We believe it is essential to name the principles of sustainable development and precaution in this paragraph, on top of mentioning them by their definition.

f) The right to a clean, healthy, and sustainable environment, paragraph 71

The GPC welcomes the definition of the right to a clean, healthy, and sustainable environment in section four. Paragraph 71 demonstrates the Committee's willingness to apply their general comment to the global environmental crisis and to recognize the interrelation between many children's rights and the environment. While the Committee lists the essential elements of the right to a clean, healthy, and sustainable environment, the list is not exhaustive.

The GPC believes that the definition of this right could be further clarified by referencing its substantive and procedural elements, as detailed by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment. The right could therefore be defined as follows¹¹:

"The right to a clean, healthy, and sustainable environment encompasses substantive as well as procedural rights. The right to a healthy environment implies, on the one hand, substantive rights including the rights to clean air, a safe climate, access to clean water

¹⁰ Translator's note: While the French version states "prevention objectives", the English version states "goals that prevent environmental harm". This translation remains faithful to the French commentary.

¹¹ United Nations Human Rights Special Procedures (2020). Right to a Healthy Environment: Good Practices - Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. <https://wedocs.unep.org/20.500.11822/32450> .

and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, as well as healthy biodiversity and ecosystems. This right entails, on the other hand, procedural rights, including the right to access environmental information, to participate in decision-making on environmental issues, and to have access to environmental justice.

g) General Obligations of States, Part A, paragraph 76

Part V ambitiously recognizes the general obligations of States and covers a significant number of obligations.

First, the GPC proposes **removing the word "reasonably"** from the phrase “States have a due diligence obligation to take appropriate measures to protect children against reasonably foreseeable environmental harm” to strengthen the introduction of the precautionary principle.

Second, in order to strengthen the principle’s usage, the GPC proposes replacing the term "precautionary approach" with the term "precautionary principle."

h) Paragraph 78

The GPC agrees with the Committee's approach to detailing the various obligations for States to respect, protect, and fulfill. Paragraph 78 of this section refers to the principle of non-regression but does not name it. This emerging principle concerns the legislative and regulatory framework for environmental protection. The World Declaration on the Environmental Rule of Law by the International Union for Conservation of Nature (IUCN) defines the principle of non-regression in Principle 12: “States, sub-national entities, and regional integration organizations shall not allow or pursue actions that have the net effect of diminishing the legal protection of the environment or of access to environmental justice.” Principle 13 states that the parties above “shall regularly revise and enhance laws and policies in order to protect, conserve, restore, and ameliorate the environment, based on the most recent scientific knowledge...”. The principle of non-regression is also evoked by Principle 1 of the Stockholm Declaration, requiring environmental "improvement": "Man (...) bears a solemn responsibility to protect and improve the environment".

The GPC suggests that the Committee refer to and define the principle of non-regression to strengthen the argumentative force of paragraph 78. The GPC suggests clarifying the last sentence of the paragraph, which states that "States shall not take retrogressive measures that are less protective of children without convincing justification," to read: "In accordance with the principle of non-regression, States should not take measures that are less protective of children."

i) Part F, paragraph 93

The GPC is pleased that the Committee denounces business policies aimed at misleading consumers, known as "green-washing" and "green-sheening." Children, who are among the most vulnerable consumers, must be protected. To strengthen the scope of this paragraph, the GPC proposes rewording the definition of "green-washing" and "green-sheening." As these policies exist to mislead the consumer, ensuring that they "do not mislead consumers," as the paragraph states, seems insufficient.

We suggest changing the last sentence of the paragraph to read: "Marketing standards should ensure that business policies such as "green-washing" and "green-sheening" **are prohibited, as they mislead consumers**, particularly children, into believing that businesses are preventing or mitigating environmental harm when this is not the truth."

j) Climate Change, part B, paragraph 104

The Committee recognizes the importance of building climate resilience and adapting to the consequences of global warming. In order to strengthen the accountability of States and major polluters and explain that adaptation measures must be taken on account of prevention policies' failings, we suggest rewording the first sentence of Part B. A possible rewording could be: "As prevention and control measures for climate change are insufficient and climate impacts are intensifying, a sharp and urgent increase in the design and implementation of child-sensitive adaptation measures and associated resources is necessary."

III. Conclusion

Irregardless of the proposed amendments, the GPC commends the Committee for such an ambitious project linking children's rights and environmental rights, and supports the project's use of environmental principles.

The GPC is committed to supporting the work of the Committee and will gladly welcome any opportunity for continued dialogue.