

Submission to the Committee on the Rights of the Child on its Draft General Comment No. 26

Children's rights and the environment with a special focus on climate change

February 2023

1. The Center for International Environmental Law (CIEL) is pleased to submit these written comments to the Committee on the Rights of the Child regarding its draft General Comment No. 26. We commend the Committee for specifically addressing children's rights and the environment, with a specific focus on climate change.

2. Given the broad impact of climate change on children's rights, and the importance of the right to a clean, healthy and sustainable environment, we recommend that the General Comment address certain issues more directly and more strongly. In particular and above all, given the very specific subject of Draft General Comment No. 26, we believe that the Committee should strengthen the section on climate change by providing more explicitly and in a more extensive way an authoritative interpretation of States' obligations and required actions in relation to all dimensions of climate policies. In particular, given the severity of the climate crisis, we urge the Committee to draw more explicitly from its previous statements and concluding observations regarding the need for States to take all necessary measures to protect children's rights from adverse impacts resulting from reliance on fossil fuels. Given the limited window of opportunity for States to mitigate the root causes of climate change and to phase out all fossil fuels in a just and equitable manner, the Committee must fully seize the opportunity provided by this General Comment to lay out and articulate related obligations of States.

3. More specifically we believe that the General Comment should: (1) articulate States' obligations under the Convention to protect children's rights from harms caused by fossil fuels; (2) amend certain references to standards for action in the context of climate change; (3) give a more central position to the right to a clean, healthy and sustainable environment; (4) take into account, when referring to the principle of sustainable development, intergenerational justice as well as planetary boundaries; (5) explicitly mention the rights of future generations of children; (6) address the need to uphold children's rights in the context of climate-induced loss and damage; (7) clearly recognize children's freedom of peaceful assembly without any sanctions and political rights; (8) insist on the need for States to terminate investment agreements or investment chapters within trade agreements that limit States' ability to uphold

children's rights; (9) clearly recall businesses' human and children's rights obligations; (10) articulate more thoroughly the need for States to protect children from threats posed by toxic pollutants particularly harmful to children; (11) include the principles of non-regression and non-retrogression among the key concepts; and (12) stress the need for climate finance to be provided primarily as grants or other concessional finance.

1. States' obligations to protect children from harm caused by fossil fuels, including through the rapid, full and equitable phase-out of all fossil fuels

4. We welcome the Draft General Comment No. 26's call for mitigation of the effects of climate change and the reminder of the risks that climate change poses to children's rights.¹ However, the Draft lacks explicit references to the devastating role that fossil fuels play in the current climate crisis and to States' obligations to take all effective measures to protect Convention rights from the continued dependence on fossil fuels. The focus on mitigation of the effects of climate change elides a critical prerequisite and arguably the best way to minimize further harm: mitigating the causes of climate change, and thereby preventing and mitigating further changes to the climate system & their consequences for people and planet. Para 99 states: "The measures set out in this section should be understood as applying both to acts or omissions in relation to the causes and effects of climate change, as well as to the design and implementation of measures through which climate action is pursued." But para 108 focuses solely on mitigating effects: "The Committee calls for collective accelerated actions to use the narrow temporal window of opportunities to mitigate the effects of climate change." It is imperative that any discussion of mitigation focus on mitigating the causes of climate change -- fossil fuels chief among them.

5. **Therefore, given the fact that the production and consumption of fossil fuels is responsible for the overwhelming majority of greenhouse gas emissions, the General Comment should explicitly address the need for States, as a matter of their obligations under the CRC, to adopt and implement policies that accelerate the end of reliance on all fossil fuels, through a rapid, full and equitable phase-out of oil, gas, and coal - including through the effective regulation of corporate actors.**

6. Fossil fuels alone were responsible for 91% of the emissions of carbon dioxide in 2022² and CO₂ from fossil fuel combustion and industrial processes has contributed to about 78% of the total increase in greenhouse gas emissions between 1970 and 2010.³ The current fossil fuel-dominated energy development contributes to the biodiversity crisis, whose impacts on children's rights are highlighted in the Draft itself, and fossil fuels are part of an industry whose

¹ Committee on the Rights of Child, *Draft General Comment No. 26*, at para 108 to 113.

² World Economic Forum, *Analysis: [Global CO₂ emissions from fossil fuels hits record high in 2022](#)*, 2022, citing the Global Carbon Project, *Carbon budget and trends 2022*.

³ IPCC, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers*, p. 5 (2014).

products and practices contribute to exposing individuals to toxic and hazardous substances.⁴ That is especially true for children living in surrounding communities close to fossil fuel production sites, refineries, and petrochemical complexes, who are exposed to hazardous chemicals and waste. The disproportionate health effects for children living around petrochemical facilities - in particular those from racial minorities - is well documented.⁵

7. The Committee has previously recognized the need for States to scale down investments in fossil fuels,⁶ and it has also recommended States to implement regulatory frameworks and energy policies that aim to mitigate the negative impacts of fossil fuels on climate change and thus uphold children's rights.⁷

8. **Consistent with its prior observations, the Committee should explicitly refer to fossil fuels as major contributors to climate change, and as a direct threat to children's rights. We strongly encourage the Committee to integrate explicit references to the obligations of States to protect children's rights from the adverse effects of the production and consumption of fossil fuels in all relevant sections of the General Comment - including but not limited to the section related to climate mitigation. The General Comment must further articulate the implications of this obligation including by making explicit that the Convention's obligations require States to act including by taking the following actions:**

- halting any new fossil fuel extraction and production projects;
- phasing out the domestic use of coal, gas and oil for energy production and accelerating the transition to renewable energy;
- reviewing any policy with regards to the extraction and export of fossil fuels from the perspective of the adverse impacts on children that unavoidably occur as a consequence of such activities;
- discontinuing financing (directly or indirectly) or other incentives to the fossil fuel-related infrastructure and activities, including petrochemicals;

⁴ This has often been recalled by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. See Report No. A/77/183, *Implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes - The impact of toxic substances on the human rights of indigenous peoples*, 28 July 2022, at para 24, 51, 52; Report No. A/76/207, *Implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes - The stages of the plastics cycle and their impacts on human rights*, 22 July 2021, at para 102 and 105; Report No. A/HRC/45/12, *Implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, 13 October 2020, at para 44.

⁵ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume - Ecological crisis, climate justice and racial justice, [UN Doc. A/77/549](#), para. 22 ff.

⁶ Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Switzerland*, Report No. CRC/C/CHE/CO/5-6, 22 October 2021; Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Canada*, Report No. CRC/C/CAN/CO/5-6, 23 June 2022.

⁷ Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Norway*, Report No. CRC/C/NOR/CO/5-6, 4 July 2018; Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Canada*, Report No. CRC/C/CAN/CO/5-6, 23 June 2022.

- protecting children and their families from the effects of large-scale development projects, such as oil and gas pipelines, resulting, inter alia, in any negative impact on health and the environment; and
- adopting moratorium and siting restrictions close to schools, residences, day care centers, and nursing homes to protect children from the impacts of pesticides and petrochemicals.

2. States' obligations to comply with standards for climate action consistent with the realization of children's rights

9. Draft General Comment No. 26 includes a section on States' obligations⁸ and a section on climate change.⁹ **However, we believe that the Draft should use stronger wording when assessing harmful impacts on children's rights due to climate inaction, and be more straightforward in calling on States to mitigate climate change.**

10. It has been recognized that a global increase in temperature of 1.5 °C would pose significant risks to human rights, especially the rights of persons in vulnerable situations,¹⁰ and that warming beyond 1.5 °C would significantly increase these same risks, to the point where almost half a billion more people might see their rights endangered at 2 °C than at 1.5 °C.¹¹ As the IPCC's latest reports have made clear, current levels of warming are already causing permanent loss and damage to human and natural systems, and every additional fraction of a degree increases risks and erodes resilience. Overshooting 1.5°C— even temporarily—will unleash irreversible impacts. Children and future generations will disproportionately bear resultant harm.¹²

11. **Given how crucial it is, in order to protect children's rights, that States comply with their obligations to prevent and mitigate the root causes of the climate crisis in line with the best available science, we urge the Committee not to make any reference to limiting global warming to well below 2 °C and to refer instead to the imperative, from a children rights perspective, of keeping the increase of global temperatures below 1.5 °C.**

12. Additionally, in order for the General Comment No. 26 to be effective and straightforward, any reference to "net zero emissions,"¹³ "negative emissions,"¹⁴ as well as all

⁸ Committee on the Rights of Child, *Draft General Comment No. 26*, at section V.

⁹ *Ibid.*, at section VI.

¹⁰ IPCC, *Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, Ch. 1, Box 1.1 (2018), Technical Summary (TS), p. 44, Ch. 5, p. 447.

¹¹ *Ibid.*, Ch. 3, 3.3.2.2; IPCC, 1.5SR, SPM, B.5.2.

¹² See CIEL, Heinrich Boell, *IPCC Unsummarized: Unmasking Clear Warnings on Overshoot, Techno-fixes, and the Urgency of Climate Justice* (April 2022), <https://www.ciel.org/reports/ipcc-wg3-briefing/>; CIEL, Heinrich Boell, *Beyond the Limits: New IPCC WG II Report Highlights How Gambling on Overshoot is Pushing the Planet Past a Point of No Return*, (February 2022), <https://www.ciel.org/reports/ipcc-wg2-briefing/>.

¹³ Committee on the Rights of Child, *Draft General Comment No. 26*, at para 102.

¹⁴ Committee on the Rights of Child, *Draft General Comment No. 26*, at para 111(e).

language related to “low greenhouse gas emissions”¹⁵ should be removed as these terms are used by corporate actors to promote false claims, ambiguity and ‘greenwash.’¹⁶ These references should be replaced by a focus on practical policies with foreseeable benefits for the environment and for children rights including the phasing out of fossil fuels, the promotion of renewable energy and energy efficiency, and the restoration of natural ecosystems. As the IPCC has acknowledged, reliance on risky and speculative technologies, unproven at scale, such as engineered carbon dioxide removal could “obstruct near-term emission reduction efforts ... [and] overburden future generations, might evoke new conflicts over equitable burden-sharing, could impact food security, biodiversity or land rights, or might be perceived negatively by stakeholders and broader public audiences,” and “might not deliver the intended benefit of removing CO2 durably from the atmosphere.”¹⁷

13. More in detail, we strongly suggest that, in respect of States’ obligations in an environmental and climate context, General Comment No. 26:

- clarifies, when mentioning States’ obligations to adopt a precautionary approach to environmental decision-making,¹⁸ that the likelihood or occurrence of environmental and climate harm to children’s rights is often foreseeable, although its scale and intensity may be uncertain. The same paragraph should call upon States to take “all effective and proportionate action to prevent environmental harm to children”;
- clearly addresses, in the final sentence of paragraph 80, both aspects of the relation between Convention obligations and the commitments of States in relevant international environmental frameworks, thereby addressing:
 - (i) States’ duty to ensure that the environmental and climate standards that they apply are consistent with their national, regional and international obligations in terms of children’s rights, including obligations pursuant to Convention on the Rights of the Child; and
 - (ii) States’ obligation to domestically enforce these environmental and climate standards in order to protect children’s rights from environmental and climate harm;
- does not include the qualifier “more” when talking about environmentally sustainable pathways of production and consumption;¹⁹
- adopts a more logical flow to the section on climate change, starting with the importance of mitigating root causes of climate change, then addressing the need for children’s rights to be mainstreamed in adaptation policies and finally addressing the need for States to deal with children’s rights related aspects of loss and damage;
- revise paragraph 111(e) to remove language suggesting that “negative emissions” from carbon dioxide removal constitute a mitigation measure and to make clear that, to “support children in full enjoyment of their environment-related rights in the shortest possible period of time,” States must *prioritize* measures to reduce emissions now—principally from fossil fuels—not treat them as a secondary approach;

¹⁵ Committee on the Rights of Child, *Draft General Comment No. 26*, at paras. 112, 117.

¹⁶ See for instance United Nations’ High-level expert group on the Net Zero Emissions Commitments of non-State entities, [Integrity matters: net zero commitments by businesses, financial institutions, cities and regions](#), 2022.

¹⁷ IPCC, AR6, WGIII, Ch. 12, at 12-39

¹⁸ *Ibid.*, at para 15.

¹⁹ *Ibid.*, at para 101.

- deletes the word “consider” from paragraph 112 of the Draft, to directly encourage States to discontinue financial investments that are dangerous for the climate.

3. A central position for the right to a clean, healthy and sustainable environment

14. We welcome the inclusion of a dedicated section on the right to a clean, healthy and sustainable environment.²⁰ However, we believe that the right to a clean, healthy and sustainable environment should occupy a more central position in a General Comment that focuses specifically on children’s rights and the environment, in particular in the context of the recent adoption by the UN Human Rights Council and the UN General Assembly of the resolution recognizing the right to a clean, healthy and sustainable environment, specifying that, while everyone feels the impacts of environmental damage, “consequences are felt most acutely by (...) segments of the population that are already in vulnerable situations, including (...) children”.²¹

15. More than 150 countries around the world grant the right to a clean, healthy and sustainable environment a legal protection.²² At the international level, this right has been recognized by the Human Rights Council as crucial “for the enjoyment of human rights”²³, including several children’s rights granted under the CRC.²⁴

16. Given the importance of the right to a clean, healthy and sustainable environment, we urge the Committee to explicitly recognize children’s right to a clean, healthy and sustainable environment among children’s rights listed out in paragraph 8 of the Draft General Comment No. 26, and to move Section IV forward in the document Draft.

17. We also recommend explicitly acknowledging other developments, including at the regional level²⁵ towards the effective recognition and protection of the right to a clean, healthy and sustainable environment.

²⁰ *Ibid.*, at section IV.

²¹ United Nations General Assembly, *The human right to a clean, healthy and sustainable environment*, No. A/76/L.75, 26 July 2022.

²² Human Rights Council, *Right to a healthy environment: good practices*, No. A/HRC/43/53, February 24 – March 20 2020.

²³ Human Rights Council, *Resolution adopted by the Human Rights Council on 8 October 2021*, No. A/HRC/RES/48/13, 18 October 2021; see also Human Rights Council, *Resolution adopted by the Human Rights Council on 7 October 2020 - Rights of the child: realizing the rights of the child through a healthy environment*, No. A/HRC/RES/45/30, 13 October 2020, in which the Human Rights Council acknowledged “the vital importance of ensuring that every child of present and future generations can enjoy an environment adequate to their health and well-being”.

²⁴ In particular, children’s rights under the Convention on the Rights of the Child to life (Article 6 of the Convention), to health (Article 24), to an adequate standard of living (Article 27), to education (Article 29), to culture (Article 30), and to have their best interests treated as a primary consideration (Article 3).

²⁵ See for instance African Charter on Human and Peoples’ Rights, adopted June 27, 1981 – entered into force on October 21, 1986, 1520 UNTS 217 at Art. 24; Arab Charter on Human Rights, adopted May 22, 2004 – entered into force on March 15, 2008, at Article 38; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted on March 4, 2018 – entered into force on April 22, 2021, at Article 1.

18. In respect of the actions listed in paragraph 73, we believe the Committee could use stronger wording on States' obligations with regard to each component of children's right to a clean, healthy and sustainable environment.²⁶ In particular, we suggest extending the scope of paragraph 73 (a) beyond the prevention of mortality of children under-five. We also encourage the Committee to expand its current reference to fossil fuels in paragraph 73(d) to include the recommendation that States stop all incentives supporting fossil fuels. Finally, it is important to stress that, while the six recommendations listed in paragraph 73 provide critical examples of the actions that the States must take to protect the right of every child to a clean, healthy and sustainable environment, these six actions do not constitute a comprehensive and exhaustive description of the range of measures necessary for States to fulfill their obligations related to this right.

4. Intergenerational justice as a key element of sustainable development

19. We welcome the inclusion of the principle of sustainable development among the Draft's key concepts.²⁷ However, we believe that the definition of this principle currently used in the draft reflects an outdated understanding of sustainable development that is not adequate to ensure the effective protection of children's rights as protected under the Convention.

20. Given the importance of intergenerational justice for younger generations, we believe that the definition of the principle should begin by echoing the 1987 report of the World Commission on Environment and Development's (Brundtland Report) definition of sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"²⁸. Furthermore, we strongly urge the Committee not to suggest that equal priority be given to all three "pillars" of sustainable development but instead to recognise that planetary or ecological boundaries²⁹ and social boundaries constrain the economic space that is available for human societies to flourish in a just, safe and sustainable manner.³⁰

²⁶ Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Right to a healthy environment: good practices*, No. A/HRC/43/53, 30 December 2019.

²⁷ Committee on the Rights of Child, *Draft General Comment No. 26*, section II.

²⁸ World Commission on Environment and Development, *Our Common Future*, 1987, Oxford University Press at Chapter 2 "Towards Sustainable Development" - para 1; see also E. B. Weiss, *Our Rights and Obligations to Future Generations for the Environment*, *American Journal of International Law*, 84 (1990), at pp. 198- 207, linking sustainable development to intergenerational equity and justice, according to which present generations have a duty "to pass the planet in no worse condition than [they] received it in", while future generations have a right to "inherit the earth in at least as good condition as it has been in for any previous generation and to have as good access to it as previous generations".

²⁹ J. Rockström et al., [Planetary boundaries:exploring the safe operating space for humanity](#), 2009, Ecology and Society

³⁰ Kate Raworth, [A Safe and Just Space for Humanity](#), 2012 Oxfam Discussion Papers.

5. Recognizing the duty of the States to protect the Human Rights of Future Generations of Children

21. The Convention contains no temporal limitation and does not limit rights to the present time. Human rights extend to all members of the human family, including both present and future generations. Decisions being taken by current decision makers can affect the lives and rights of those born years, decades, or many centuries in the future. In recent decades, the need to recognize the intergenerational dimensions of present conduct have taken on increasing urgency, particularly in the context of the triple planetary crisis. Children are closest in time to generations still to come and thus occupy a unique position, and have an important role to play, within the transition to long-term, multigenerational thinking required to consider and ensure both justice and sustainability across an array of timescales.

22. **We strongly urge the Committee to stress the principle of intergenerational equity in the section dedicated to key concepts, including by recognizing explicitly the need for States to respect and protect the human rights of future generations of children and by stressing that this comes with legal responsibilities as a consequence. These include the need for States and other duty bearers to refrain from any conduct that can reasonably be expected to result in or perpetuate any form of discrimination against future generations of children.**

6. Safeguarding children's rights in the context of climate-induced loss and damage

23. We observe that Draft General Comment No. 26 lacks a section specifically dedicated to loss and damage, despite this being the third pillar of climate action alongside mitigation and adaptation, and despite its disproportionate impacts on children's rights.³¹ Loss and damage is only mentioned once in the Draft, in the context of international cooperation, and not much is said by the Committee on States' obligations with regard to it, nor on the need to develop.³² We encourage the Committee to adequately address the importance of protecting children's rights in the context of loss and damage by systematically mentioning "loss and damage" along with references to "mitigation and adaptation". Further references could be included throughout the document for instance in relation to the right to education.³³

24. **We urge the Committee to add a subsection on loss and damage to section VI on climate change, and to systematically include loss and damage when climate mitigation and adaptation are mentioned throughout General Comment No. 26. We also recommend**

³¹ IPCC, 2022: *Climate Change 2022: Impacts, Adaptation and Vulnerability*, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, TS.B.4.5, TS.B.4.1, TS.B.4.4, TS.B.5.

³² See Office of the United Nations High Commissioner for Human Rights, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, No. A/HRC/35/13, 4 May 2017, at para 62 (d), recalling the need to develop "a loss and damage system that ensures effective remedies for climate-related human rights harm, particularly that experienced by children".

³³ UNICEF, [It Is Getting Hot: Call For Education Systems to Respond to the Climate Crisis](#), 2019.

mentioning loss and damage in paragraph 105, when providing that adaptation measures “including (...) response and recovery, should take into account the views of the children”, making it clear that this also holds true in a situation of loss and damage.³⁴

25. Finally, it would be consistent with section III.K on access to justice and remedies to add States’ obligation to remedy current and future harm caused to children at the end of paragraph 100, as a reasonable consequence in the event that mitigation actions and adaptation strategies prove insufficient to uphold children’s rights. The paragraph 63 should also be amended to avoid precluding or discouraging adjudication by removing the suggestion that the majority of cases of climate or environmental harm are complex.

7. Clear recognition of children’s political rights and freedom of peaceful assembly absent any sanction

26. The Draft General Comment No. 26 does not make any reference to children’s future political rights, whose existence shall not be constrained by today’s short-term policies.³⁵

27. We recommend taking into account future political rights of children and mentioning the need for current law-makers not to constrain future generations by adopting policies that do not sufficiently limit environmental and climate harm or would require drastic future policies the implementation of which would threaten economic, social and cultural rights of children.

28. The Draft General Comment No. 26 explicitly recognizes a number of children’s political rights and freedoms in relation to environmental policies, including children’s freedom of peaceful assembly.³⁶ The Committee has stated, in the context of climate protests, that Article 12 of the Convention requires children to “be at the center of the discourse on climate change” and that “any threat or abuse of children for their oral or written expression is unacceptable”.³⁷

29. We suggest that the Committee explicitly adds freedom of peaceful assembly when mentioning freedom of expression and association,³⁸ and we urge it to stress the need for children to be free of the fear of any sanctions and retaliation (including in a school context) when children exercise their freedom of peaceful assembly by engaging in protest on environmental and climate issues.

³⁴ Committee on the Rights of Child, *Draft General Comment No. 26*, para 105.

³⁵ See for instance German Federal Constitutional Court, [Neubauer at al. v. Germany](#), judgment of April 29, 2021, at para 204 et ss, recognizing that “environmental protection is elevated to a matter of constitutional significance because the democratic political process is organised along more short-term lines based on election cycles, placing it at a structural risk of being less responsive to tackling the ecological issues that need to be pursued over the long term. It is also because future generations - those who will be most affected - naturally have no voice of their own in shaping the current political agenda”.

³⁶ Committee on the Rights of Child, *Draft General Comment No. 26*, at Section III subsection J.

³⁷ Press release, [UN child rights committee voices support for children campaigning on climate change](#), 27 September 2019.

³⁸ Committee on the Rights of Child, *Draft General Comment No. 26*, at para 8.

8. Termination of investment agreements or investment chapters within trade agreements limiting States' ability to uphold children's rights

30. Draft General Comment No. 26 encourages States to discontinue financial investments that are not “consistent with low greenhouse gas emission pathways”³⁹ and to incentivize investments in carbon-neutral technologies.⁴⁰

31. States are required to comply with their human rights obligations in any context and legal framework, including international agreements for economic cooperation and other finance mechanisms and should only enter into and remain party to agreements that “support, rather than hinder, the ability of States to respect, protect and fulfill human rights”.⁴¹ In addition to “a lack of provision for the protection of human rights in the core of international investment agreements”,⁴² we note that investor-State dispute settlement arrangements are often a constraint on States' ability “to protect and fulfill the human rights of [their] people”.⁴³

32. **Therefore, we urge the Committee to explicitly address the need for States to cease all investment agreements and investment chapters within trade agreements that incentivize activities harmful for climate and the environment, which threaten children's rights, as well as all agreements that provide for investor-State dispute resolution processes that do not sufficiently ensure the enforcement of States' and businesses' obligations in respect of children's rights. States should withdraw from and cease enforcing any such agreement while also refraining from concluding any new agreements of this type of or entry into**

9. Businesses' obligations for the realization of children's rights

33. We appreciate the Committee's statements on businesses' responsibilities to respect children rights,⁴⁴ and the recognition of businesses' role as major contributors to climate

³⁹ Committee on the Rights of Child, *Draft General Comment No. 26*, at para 112 and 117.

⁴⁰ *Ibid.*, at para 117 and 118.

⁴¹ Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, No. A/HRC/37/59, 24 January 2018, at para 39.

⁴² Working Group on the issue of human rights and transnational corporations and other business enterprises, *Tenth session of the Forum on Business and Human Rights*, No. A/HRC/50/41, 12 April 2022, at para 38.

⁴³ Working Group on the issue of human rights and transnational corporations and other business enterprises, *Human rights and transnational corporations and other business enterprises*, No. A/72/162, 18 July 2017, at para 76; see also Working Group on the issue of human rights and transnational corporations and other business enterprises, *Tenth session of the Forum on Business and Human Rights*, No. A/HRC/50/41, 12 April 2022, at para 38, stating that investor-State dispute settlement arrangements limit “sovereignty of States in terms of their rights and obligations to draw up regulations in relation to issues of public interest”, including with regard to human rights.

⁴⁴ Committee on the Rights of Child, *Draft General Comment No. 26*, at para 90.

change, adversely affecting children's rights.⁴⁵ We also recognize that the Draft duly mentions States' obligations to adopt a regulatory framework to protect children's rights from violations by corporations' harmful actions.⁴⁶

34. States should require businesses, and businesses should put in place, a "human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights",⁴⁷ including children's rights,⁴⁸ across the whole supply chain. This Committee has already recalled in its General Comment No. 16 how "children's rights is not an automatic consequence of economic growth and business enterprises can also negatively impact children's rights".⁴⁹

35. We urge the Committee, building on its General Comment No. 16, to first and foremost highlight States' obligations in respect of the business sector impacts on children's rights, alongside businesses' duty of care⁵⁰ and due diligence responsibilities for adverse impacts on children's rights across supply and value chains. We also urge the Committee to clearly distinguish these obligations from any reference to the positive dimension of businesses' activities or any encouragement to States to incentivize these activities (if such reference is going to be included).⁵¹ To this end, we recommend deleting the word "however" at the beginning of the third sentence of paragraph 91, which weakens what is stated in the previous sentences.

36. The reference to a duty for businesses to "exert influence"⁵² with regards to their supply chain should be strengthened so as to align with the need for businesses to comply with due diligence obligations and responsibility in any event of adverse impacts across supply chains. Finally, we strongly believe that reference to the need for States to incentivize business enterprises to generate new technologies in paragraph 114 should be removed, since States' primary concern should regard funding of public research to prevent the capture of scientific progress by corporate actors.

10. Safeguarding children's rights from threats posed by hazardous substances, waste, and plastics

⁴⁵ *Ibid.*, at para 114.

⁴⁶ *Ibid.*, at para 92, 93 and 115 to 117.

⁴⁷ Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, No. A/HRC/17/31, 2011, at Principle 17.

⁴⁸ *Ibid.*, at commentary on Principle 3.

⁴⁹ Committee on the Rights of the Child, General comment No. 16 (2013) on States' obligations regarding the impact of the business sector on children's rights, No. CRC/C/CG/16, 17 April 2013.

⁵⁰ See Fian International, [Business Due Diligence and Related States' Obligations in the Context of Corporate Accountability](#), 2022, recognizing that the duty of care, contrary to the obligation of due diligence, "imposes a legal obligation on corporations of reasonable care towards persons and the environment, which they could foreseeably harm through their operations" and "triggers the civil liability of businesses when the harm occurs".

⁵¹ Committee on the Rights of Child, *Draft General Comment No. 26*, at para 91, 114 and 117.

⁵² *Ibid.*, at para 114.

37. We welcome the Draft General Comment No. 26's call for identifying and addressing environmental health concerns relevant to children. However, the Draft lacks explicit reference to the negative impacts of hazardous chemicals and pesticides, including endocrine-disruptors, on children's rights and the rights of future generations⁵³, and to the need to phase these substances out in order to realize those rights. **Therefore, given the undeniable role of hazardous substances, including endocrine disruptors, in the current pollution crisis, the General Comment should explicitly address the need to phase them out and the obligations of public and private actors in the realization of this goal.**

38. Children are also exposed to hazardous chemicals through plastics, including plastic toys made of recycled plastics⁵⁴, as well as through microplastics in the air, soil, water, breastmilk, and food. Microplastics do not only contain and leach hazardous chemicals, but also further adsorb and serve as a vector for other contaminants from the environment, leading to the combined exposure to a complex mixture of known and suspected hazardous substances. **Therefore, the Committee should explicitly refer to hazardous substances and pesticides, including endocrine disrupting chemicals, as well as plastics and microplastics, as major contributors to the pollution crisis, and as a direct threat to children's rights.**

39. Children are also victims of one of the worst forms of child labor⁵⁵ by working as waste pickers. **We suggest dedicating a specific part of the subsection on children's rights and the business sector to include reference to waste pickers and clarify that sorting, scavenging, and recycling collection, are considered as types of hazardous child labor.** The Committee should highlight its own Concluding Observations on how children are economically exploited and on the high prevalence of child labor in the informal sector or hazardous work in garbage dumps, including in garbage collection.⁵⁶

11. Recognition of the non-retrogression and non-regression principles

40. Draft General Comment No. 26 lists among States' obligations, the obligation "not to take retrogressive measures that are less protective of children without convincing

⁵³ Evanthia Diamanti-Kandarakis et al., *Endocrine-Disrupting Chemicals: An Endocrine Society Scientific Statement*, *Endocrine Reviews* 30, no. 4 (June 2009): 293–342, <https://doi.org/10.1210/er.2009-0002> p. 296.

⁵⁴ Jitka Strakova, Joe DiGangi, and Lee Bell, *POPs Recycling Contaminates Children's Toys with Toxic Flame Retardants*, 2017.

⁵⁵ ILO Convention 182 states that the worst forms of child labor comprises "3.(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children". ILO Recommendation 190 provide criteria to classify hazardous work under the Convention 182, including: "II.3.(d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health."

⁵⁶ CRC- Uruguay [CRC/C/URY/CO/3-5](#), para. 65 / [CRC/C/BRA/CO/2-4](#) Brazil: para. 81. / [CRC/C/PER/CO/4-5](#) para. :65, Peru, [CRC/C/ECU/CO/4](#) (CRC, 2010), Ecuador: para. 70.

justification”.⁵⁷ This reference, which is rather common in General Comments published by the Committee,⁵⁸ is an expression of the well-established principle of non-retrogression.⁵⁹

41. Draft General Comment No. 26 does not include any explicit reference to the principle of non-regression, which requires States not to weaken their domestic levels of protection of the environment.⁶⁰ Such principle is increasingly recognized in international environmental agreements,⁶¹ and it is one of the premises on which the Paris Agreement has been built.⁶² The principle is especially powerful in a human rights context, to the point that it has been said that, when it comes to human rights in relation to the environment, “there is a strong presumption against retrogressive measures”.⁶³

42. **We encourage the Committee to dedicate a specific subsection to the non-retrogression and non-regression principles, and to explicitly include them among the key concepts listed in the Draft General Comment no. 26 - in particular considering the importance of these principles to protect the rights of children in the context of intergenerational equity.**

12. International Cooperation and Finance

43. We commend draft General Comment No. 26 for its inclusion of climate finance and welcome the recommendations for ensuring that climate finance takes a child rights-based approach. We also welcome the recommendation that climate finance bridge the gap between mitigation and adaptation. Additionally, climate finance must not contribute to the debt burden of recipient States, thus hindering their ability to uphold child rights and displacing costs onto future generations. As such, climate finance should be provided primarily as grants or other concessional finance.

⁵⁷ Committee on the Rights of Child, *Draft General Comment No. 26*, at para 78.

⁵⁸ See Committee on the Rights of the Child, *General comment No. 24 (2019) on children’s rights in the child justice system*, No. CRC/C/CG/24, 18 September 2019, at para 4 and 27; Committee on the Rights of the Child, *General comment No. 21 (2017) on children in street situations*, No. CRC/C/CG/21, 21 June 2017, at para 31; Committee on the Rights of the Child, *General comment No. 19 (2016) on public budgeting for the realization of children’s rights (art. 4)*, No. CRC/C/CG/19, 20 July 2016, at para 34; Committee on the Rights of the Child, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, No. CRC/C/CG/15, 17 April 2013.

⁵⁹ See UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, at Article 30; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, Treaty Series, vol. 993, p. 3, at Article 2(1); Office of the High Commissioner for Human Rights, CESCR General Comment No. 3 The Nature of States Parties’ obligations (Art. 2, Para. 1, of the Covenant), No. E/1991/23, 14 December 1990.

⁶⁰ A. Mitchell, J. Munro, [An international law principle of non-regression from environmental protections](#), 2023, *International & Comparative Law Quarterly*.

⁶¹ See Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted on March 4, 2018 – entered into force on April 22, 2021, at Article 3.

⁶² Paris Agreement, December 12, 2015 in Annex of Decision 1/CP.21, “Adoption of the Paris Agreement”, December 12, 2015, FCCC/CP/2015/10/Add.1, at Articles 3 and 4.3.

⁶³ Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Mapping Report, No. A/HRC/25/53, 30 December 2013, at para 80.

44. **Therefore, we recommend adding the following additional paragraph:**

Climate finance should be provided in the form of grants not loans so as not to further indebt States, many of whom already face considerable debt burdens, which negatively impact their ability to address children's rights. Loans can also disproportionately affect children as they will have the responsibility of paying off the debt.

45. **We also suggest addressing, in section G, States' obligations in respect of international cooperation in all environmental matters, without focusing solely on climate cooperation, which should instead be specifically addressed in the subsection on climate finance.** In section G, it is also advisable to add "developed" when referring to "high income States".⁶⁴

13. Other recommendations

46. Given the broad scope of the draft General Comment, we believe that the Committee could refer in its introduction to a broader set of multilateral environmental agreements in addition to those related to climate change, including references to legal instruments related to biodiversity and toxics and hazardous substances (cf. para. 10).

47. References to the importance of taking the best available science into account should also acknowledge the importance of indigenous and traditional knowledge in understanding potential climate-related and other environmental harms on children's rights (cf. para. 14). Additionally "best available science" does not need to be qualified as "accepted".

14. Conclusion

48. CIEL thanks the Committee for the opportunity to present this submission. For any questions or clarification, please do not hesitate to reach us at sduyck@ciel.org.

⁶⁴ *Ibid.*, at para 94 and 95.