



KinderrechtenCollectief

Open submission of the Dutch NGO Coalition for Children's Rights to the UN Committee of the Rights of the Child

for the second round of consultations for General Comment no. 26 to the Convention on the Rights of the Child

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1. Introduction

The Dutch NGO Coalition for Children’s Rights (the Coalition) makes this open submission to the second round of consultations on General Comment no. 26 to the UN Committee of the Rights of the Child. Through the Coalition, organisations join forces to protect the interests of the child and supervise the safeguarding of children’s rights in Dutch law, policy and practice. We write this submission from the Dutch perspective.

The submission engages with three main themes: mental wellbeing in light of environmental issues, the responsibilities of governments and businesses (especially in high-income states), and child and youth participation in environmental issues. Many topics discussed in this submission are relevant to children’s rights in general, but even more so in light of environmental challenges and climate change. The topics discussed are highly interlinked, and we ask you to consider them as such.

A consultative meeting with organisations concerned with children’s rights and/or the environment was held in Leiden on 20 January 2023. Over 20 organisations participated, including a range of NGOs, youth organisations, the Children’s Ombudsman and National Committee UNICEF the Netherlands. Input was collected on the three main themes of this open submission. Please find the list of experts consulted in the annex. The Coalition has also translated and disseminated the youth questionnaire in the Netherlands. The responses partially inspired the discussion at the expert meeting.

2. Mental wellbeing in light of environmental issues

2.1 Mental health as a key aspect of the right to health

We appreciate the attention to the relationship between the right to the highest attainable standard of health and environmental issues in the draft General Comment. This right relates not only to physical health, but also to mental wellbeing. The mental wellbeing of children is threatened by concern, stress, and anxiety about the environment and climate change.¹ Therefore, we propose expanding on the mental wellbeing of children in light of environmental issues, already briefly discussed in paragraph 27, in the final General Comment. In addition to the right to health, this topic is linked to the right to information, the right to education, and the right to participation.

Although it is clear that environmental issues and climate change can have detrimental effects on children's mental health, the precise effects and the best ways to counter them are not fully known. In the Netherlands, and likely more countries, there is currently insufficient knowledge on which (groups of) children are especially vulnerable to the mental health effects of environmental issues and climate change (see also section 3.1 on differences within countries). Vulnerable children should receive extra and specialised protection. Governments should facilitate (country-specific) research to identify which groups of children are especially vulnerable and how their vulnerabilities can be addressed. Governments can benefit from this knowledge by applying it in their law- and policymaking. We propose that a similar text to the above is added to paragraph 27 or 81.

2.2 Preventing harm

In our opinion, the General Comment should focus on empowering children to adequately cope with environmental issues and climate change to prevent harm to their mental wellbeing. We suggest to integrate the needs of children in relation to their mental wellbeing in paragraphs 33 and 86.

The draft General Comment already recommends that information and education be tailored to the age and capacities of children. We would like to add that it should also be tailored to the developmental needs of each child. Similarly, we propose to add to paragraph 33 that school curricula should also be tailored to the specific emotional context. They should facilitate and encourage social emotional learning.

Environmental education, as discussed in paragraph 33, should focus on giving children a toolkit for engaging with these issues, including, but not limited to, knowledge on modes of participation in environmental decision-making, dealing with polarising topics, remedies in case of rights violations, how to remain hopeful, and access to (psychological) health care.

The issue of mental wellbeing is related to the right to participation. Effective participation can be a valuable tool for children's empowerment and contribute to their mental wellbeing. Ineffective participation, on the other hand, poses a threat to mental wellbeing. In the Netherlands, children report a sense of powerlessness due to a lack of or ineffective participation, because governments and businesses have much more power than children in environmental decision-making. We suggest that the danger that this dynamic poses to the mental health of children, is recognised in the General Comment. We further suggest a cross-reference to mental wellbeing is made in paragraph 56 (right to be heard). On the topic of (effective) participation, we further refer you to chapter 4.

¹ On this relationship, we also refer you to the policy brief *Mental Health and Climate Change* by the World Health Organization (<https://www.who.int/publications/i/item/9789240045125>) and the essay *Raising Children in a Warming Climate* by the Netherlands Youth Institute (<https://www.nji.nl/sites/default/files/2022-09/Raising%20children%20in%20a%20warming%20climate.pdf>)

For those children who need it, states (especially high-income states) have a responsibility to facilitate access to psychological support under article 24 of the CRC. We suggest to explicitly mention empowerment and self-efficacy as key concepts to help children cope long-term in paragraph 69.

3. Responsibilities of governments and businesses

With a focus on the additional accountability of high-income states and businesses

3.1 Responsibilities of the state

The draft General Comment accurately sets out the responsibilities of state parties in light of the CRC. We note with appreciation the attention paid to Child Rights Impact Assessments. However, we propose to add a more precise description of the relevant accountability mechanisms, describing how states should report on their responsibilities relating to existing international law regarding the environment and climate change.

Writing from the perspective of a high-income state, we propose to add to chapter V-B (heightened obligations), the principle of differentiated responsibilities (as formulated in paragraph 94). High-income states should have a heightened responsibility due to their historical responsibility for damage to the environment and climate. This responsibility consists of dedicating means to mitigation of climate change and to assist low- and middle income countries.

In addition to differences between states, we propose to discuss inequalities *within* states in paragraph 94-95. For example, there are significant differences in the standard of living between the European and Caribbean parts of the Netherlands, and some groups of children are more significantly impacted by the effects of environmental harm and climate change. In our opinion, internal inequalities such as these bring about heightened obligations for the state to protect the more vulnerable groups. Moreover, we propose to refer specifically to loss and damages in paragraph 95, reflecting the recent agreements of COP27.

More generally, we propose to broaden chapter V-G (International cooperation) to include international environmental challenges, such as the preservation and recovery of biodiversity, forests, water and maritime life, rather than only climate change. Recovery is important in addition to preservation, as it helps (future) children to re-establish their relationship with nature and reap the benefits of a healthy environment.

To strengthen and clarify the obligations of states set out in the General Comment, we further propose to:

- Change the wording of paragraph 100 to more specifically refer to the need for a just transition.
- Describe in more detail the obligations relating to ground pollution and the issuance of toxic materials in chapter IV.
- Use a stronger wording in paragraph 118, such as: “States should ensure that their obligations under trade and investment agreements do not contradict their obligations under the Convention.”

3.2 State responsibilities regarding the business sector

Although businesses have their own independent responsibilities with respect to the environment (see section 3.3), states should also play a role in holding businesses accountable. In paragraph 81, we propose to add reference to the responsibility of states to collect data on, monitor, and provide insight into the activities of businesses that harm the environment.

Moreover, we suggest to mention that states should consider making sustainable choices more financially attractive for companies and consumers. As an example, the Netherlands currently has the undesirable situation that the use of gas and energy becomes cheaper as more is used.

3.3 Responsibilities of the business sector

We suggest that the final General Comment should more explicitly assert accountability for the business sector. We propose to add the following sentence: “States should hold business sectors accountable for their responsibilities in line with the Convention.” To ensure that states and businesses are given concrete tools, we suggest that a non-exhaustive description of means available for establishing accountability should follow. This can aid states and businesses alike to translate the General Comment into concrete policies and national law.

As a good example of a business being held accountable for its impact on the environment, we refer to the Dutch case *Milieudefensie v. Shell*.² In this case, argued inter alia on the basis of international human rights obligations, a duty of care for businesses to comply with international environmental standards is confirmed, existing independently from the obligations of the state to hold businesses accountable. In our opinion, this case provides a good example of how human rights documents, such as the upcoming General Comment, can contribute to realising business accountability.

As mentioned in paragraph 92 of the draft General Comment, these responsibilities should apply broadly to the entire supply chain. We suggest to make more explicit that this includes international activities.

Under General Comment no. 16 to the CRC, businesses also have an obligation to “seek the views of children and consider them in decisions that affect them” (paragraph 23). We propose to add this reference to General Comment no. 26. On child and youth participation, we further refer you to chapter 4 of this submission.

4. Child and youth participation in environmental issues

With a focus on effective remedies

4.1 Child and youth participation

We appreciate that the draft General Comment emphasises the right of children to be heard in environmental issues. Due to the grave importance of this topic and its many links with other children’s rights, we ask you to consider the following points relating to clarifications of the content and scope of the right.

In chapter III-I:

- We suggest expressing more explicitly that the right to be heard applies in the context of both the right to a clean, healthy and sustainable environment (IV) and climate change (VI).
- We moreover suggest expressing more explicitly that the right to be heard applies in the context of Chapter VI-C (Mitigation), VI-D (Business) and when referring to ‘loss and damage’.
- Consider addressing that, if participation is to be effective and meaningful, children need to be supported and adequately prepared. Children should be provided with the necessary knowledge and tools enabling them to participate in environmental decision-making, if that suits the child’s developmental wishes and needs (see section 2.2).

² <https://en.milieudefensie.nl/climate-case-shell>

- We recommend adding the need to connect children, especially in cities, to nature as a prerequisite for meaningful and effective participation.
- Awareness and knowledge of children’s rights is specifically important in realising meaningful and effective participation, not in the least for environmental human rights defenders. We recommend referring specifically to children’s rights education, rather than human rights education in general in chapter III-C and III-J.

Concerning the right to be heard:

- In paragraph 56, we suggest to emphasise that caution is needed in facilitating child and youth participation, as children should not feel any responsibility for trying to resolve environmental or climate issues. Neither should they feel obliged to sacrifice (much of) their free time in the context of participation, rather than during school hours (see also chapter 2 on mental wellbeing).
- In the last sentence of paragraph 56, we propose to mention the physical environment in addition to the digital environment.
- In paragraph 57, we suggest making more explicit that the right to information also refers to available remedies in case of a rights violation, both regarding the right to participation itself and the right to a clean, healthy and sustainable environment.
- In paragraph 60, we propose calling on States to minimize (the effects of) criminal records for young environmental human rights defenders, to protect them against the impact thereof on their futures.
- In paragraph 84-86 (Chapter V-C), we propose referring to General Comment no. 12 to the CRC, paragraph 82 and 134a and to emphasize the role of schools in this regard, as effective participation depends on access to complete and correct information.
- Paragraph 84-86 (Chapter V-C): for systemic reasons, we recommend moving this section to Chapter III, after Freedom of expression (III-J). Children cannot effectively participate or act as environmental child rights defenders when they are not adequately informed, see also paragraph 77. The right of the child to information concerns information about their rights, including their right to participate; the environment and environmental harm; climate change, including its impact on the daily lives of children; a sustainable lifestyle; obligations of the State and business sector and climate finance. For the right to information regarding remedies, see section 4.2 below.
- In paragraph 87, we suggest adding the right of the child to be heard to ensure the involvement of children in child rights impact assessments.

4.2 Effective remedies

It is key that children have access to effective remedies in case of rights violations. Some participants of the Dutch youth questionnaire in this round of consultations report that they have little awareness and knowledge about remedies in case of rights violations. Children must be provided with full, accessible, diversity-sensitive and age-appropriate information in the context of rights that might be violated as well as remedies. Moreover, children in the Netherlands (as a group) experience barriers to access remedies due to age-discrimination (see also III-G) and a lack of agency, having no legal standing. The General Comment can play an important role in setting out state responsibilities in this regard.

In chapter III-K:

- We suggest to refer to and use the terminology set out in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.³

³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

- We suggest to more explicitly address both procedural and substantive elements of remedies, as well as access to relevant and ‘child-friendly’ information concerning rights violations and reparations (see also section 2.2 on appropriate information).
- We propose to further clarify the importance of having effective remedies in place for children.
- We suggest to refer to the heightened duty of care on the state in paragraph 82 regarding remedies, given the impact of violations on the development of children (see also chapter 3 of this submission).
- In paragraph 68, we propose to refer to the cross-border responsibility of states.⁴
- In paragraph 69, we propose referring to mitigation, adaptation, and damage and (non-) economic loss, with a specific reference to the recent developments of COP27.
- In paragraph 69, we suggest adding ‘guarantees of non-repetition’ as a substantive element and ‘including access to medical and psychological assistance’ to the element of rehabilitation.

5. Terminology and phrasing

We make the following suggestions regarding the terminology and phrasing used:

- Throughout the text, consistently use the terms “high income states” and “low- and middle income states,” rather than “developed and developing states.”
- In paragraph 19, replace “environmental actions” with “environmental actions that harm the environment” to clarify that this paragraph does not refer to positive environmental actions.
- In paragraph 52, replace “appropriate” with a more strongly worded commitment (e.g. “mandatory”) to clarify its importance.
- In paragraph 65, replace “complaint mechanisms” with “judicial and non-judicial mechanisms” to clarify the range of relevant mechanisms and add that they have to be child-friendly.
- In paragraph 95, update the phrasing of “by facilitating the transfer of green technologies” to reflect that green technologies are not only developed in high-income countries and that a transfer should consider local and regional circumstances.
- In paragraph 112, strengthen the wording by replacing “should consider discontinuing” with “should discontinue.”
- In paragraph 116, make explicit to which “applicable environmental standards” the text refers.

6. General points of feedback

Finally, we ask you to consider the following suggestions that are not specific to one of the three main topics of this submission:

- Where relevant, consider referring to the Sustainable Development Goals.
- Acknowledge that the independent legal rights of nature are increasingly recognised by states, while keeping the children’s rights perspective front and center (e.g. in paragraph 10(b), 69 or chapter VI).

⁴ <https://www.ohchr.org/en/press-releases/2021/10/un-child-rights-committee-rules-countries-bear-cross-border-responsibility>

- Consider to acknowledge that, according to the preamble of the CRC, the right to health can also apply to children who have not yet been born, and to acknowledge the heightened importance of the first 1000 days of the development of a child.⁵
- Consider dedicating a separate paragraph to protecting children in light of domestic and international migration due to climate change.
- Acknowledge that children are at increased odds of experiencing a natural disaster relating to climate change and their detrimental effects.

⁵ <https://www.amsterdamumc.org/en/research/institutes/amsterdam-public-health/news/-the-first-1000-days-influence-the-whole-life-.htm>

7. Annex: Authors and consulted experts

Through the Coalition for Children's Rights, organisations join forces to protect the interests of the child and supervise the safeguarding of children's rights in Dutch law, policy and practice. The Coalition consists of key members Defence for Children, Kinderpostzegels, the National Youth Council, Save the Children, and Terre des Hommes Netherlands, and has the Netherlands Youth Institute as its advisor. Besides its key members, the Coalition has many other partners.

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General points of feedback

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