

The climate crisis as a children's rights crisis. The General comment No. 26 and what needs to happen now

Position Paper of the Child and Youth Welfare Association – AGJ¹

Abstract

The Child and Youth Welfare Association – AGJ welcomes the publication of the General comment No. 26 on children's rights and the environment with a special focus on climate change by the UN Committee on the Rights of the Child as an opportunity to consider the content and the resulting obligations of states and other involved parties.

The position paper first emphasises the relevance of children's environmental rights and makes it clear that children and young people are particularly affected by the climate crisis. Swift, decisive action by the global community is immensely important in order to mitigate the damage caused by the climate crisis and enable current and future generations to have a life worth living on this planet. The observance and implementation of ecological children's rights and the UN Convention on the Rights of the Child (UN CRC) as a whole play a decisive role here. The significance of the General comment No. 26, which can be used as a guideline for and specification of ecological children's rights, is presented first in the paper. This is followed by a summary of the contents and the obligations of states defined in the General comment No. 26. In a concluding chapter, the AGJ formulates recommendations and requirements for all levels of government: 1) the acknowledgement of the right to a clean, healthy and sustainable environment for children in national laws, 2) the political alignment of all ministries with the guidelines of the General comment No. 26, 3) the assumption of responsibility for foreseeable environmental threats, 4) comprehensive measures to ensure the dignity and protection of young people, 5) the participation of young people in political decisions and 6) close cooperation between the federal government and civil society to fight for children's environmental rights.

The AGJ also formulates measures and recommendations for the child and youth welfare structures in Germany. It shows that child and youth services can contribute to the dissemination and accessibility of GC 26 for young people. It can also promote the raising of

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We would particularly like to thank the National Coalition Germany - the network for the implementation of the UN Convention on the Rights of the Child for their cooperation and the expertise they have contributed to the process of drafting this paper. The contact person here is Kirsten Schweder (kirsten.schweder@netzwerk-kinderrechte.de).

environmental awareness in its programmes and broaden young people's view of global challenges and injustices. Furthermore, child and youth services should involve young people in all their activities, as well as ensure that young people are heard and are involved in issues and measures that affect the climate - and can assert their rights if necessary. In conclusion, the AGJ points out ideas for an advancement of the General comment and suggests, among other things, that it be made a permanent item in the UN CRC state report process.

Children and young people are particularly affected by the climate crisis!

With the statement "The climate crisis as a children's rights crisis. The General comment No. 26 and what needs to happen now", the Child and Youth Welfare Association – AGJ recognises the publication of the *General Comment No. 26 on children's rights and the environment with a special focus on climate change*² (GC26) of the UN Committee on the Rights of the Child. The AGJ is renewing its call for decisive action to realise children's environmental rights, which it already made in 2020 with the paper "How dare you? The responsibility of child and youth welfare for the implementation of children's environmental rights"³. In this paper, the AGJ already emphasised that intact environmental conditions are fundamental and indispensable for the realisation of almost all children's rights.

The realisation of children's rights in the fight against the climate crisis and rapidly progressing environmental destruction is one of the greatest challenges of our time. The global community must rise to this challenge if life on this planet is to continue to exist and be of high quality for present and future generations. The climate crisis is already drastically affecting children and young people in various regions of the world. Their chances of a good future are rapidly diminishing due to the destruction of nature and the climate.⁴ The latest IPCC report⁵ shows that children will experience three to four times as many extreme climate events in their lifetime – an alarming development that emphasises the urgent need to do more to reduce emissions and protect the lives of future generations. The risks identified in the report can only be significantly reduced through urgent action to limit global warming and through increased adjustment efforts – for example, through the protection and conservation of nature and better planning and management of our cities. Children and young people must be involved in measures to curb the climate crisis and the extinction of species, because they are particularly affected. The GC 26 offers a helpful starting point for this.

² <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-26-2023-childrens-rights-and>.

³ Can be accessed here: https://www.agj.de/fileadmin/files/positionen/2021/AGJ-Discussion_Paper_How_dare_you.pdf

⁴ This is proven by figures on an alarming scale: "Every year, 1.7 million children under the age of five die due to adverse environmental conditions. Nine out of ten children in metropolises such as New Delhi, Shanghai or Karachi breathe air that is harmful to their health. Around 1.5 million children die every year from gastrointestinal diseases as a result of contaminated drinking water. Today, 500 million children live in areas with an extremely high flood risk. Around 115 million children are exposed to the effects of tropical cyclones and almost 160 million children live in places threatened by drought."

(https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf.)

⁵ *ibid.*

With this paper, the AGJ would like to make a contribution to publicising GC 26, present the main contents and show what obligations can be derived from the guidelines for policy-makers, as well as for the child and youth welfare structures.

What are children's environmental rights?

The term "ecological children's rights" has now found its way into the socio-political debate on children's rights. The term is sometimes defined as: "Right of every child in this world to grow up in an intact environment, to lead a healthy life and to develop positive prospects for the future".⁶ In the UN Convention on the Rights of the Child, children's environmental rights are explicitly not mentioned, but many rights relate to the environment and the healthy growing up of children and young people. Children's environmental rights can therefore be derived from the Convention on the Rights of the Child. For the realisation of almost all children's rights, intact environmental conditions are both fundamental and essential.

What is the purpose of the General comment of the UN Committee on the Rights of the Child?

It is not always clear what steps states must take to implement certain provisions of the UN CRC. For this reason, the UN Committee on the Rights of the Child drafts the General Comments as interpretative aids. It describes in detail how a particular issue or situation affects children's rights, for example the climate crisis and the unprecedented scale of environmental damage.

The Convention formulates recommendations and identifies what states must do in the face of such challenges in order to safeguard and protect these rights. To date, 25 General Comments have been published on various topics relating to children's rights.

The General Comments serve as a guideline for the 196 states that have ratified the UN Convention on the Rights of the Child, but they are not binding. They get to the heart of what needs to be done by the state to guarantee the right to a clean and safe environment and to specify the rather vague statements of the UN CRC on the subject of environmental and climate protection.

The General comment No. 26 – Process, objectives and content

The Chair of the UN Committee on the Rights of the Child, Mikiko Otani, announced in June 2021 that the Committee will draft a General Comment on the UN Convention on the Rights of the Child on the topics of children's rights, the environment and climate change. The Committee invited people from all over the world to contribute to the General Comment, including young people and other experts.

Two years later, on 28 August 2023, the GC 26 "Children's Rights and the Environment with a Special Focus on Climate Change" was published. This was the Committee's response to the increasingly loud voices of children and young people who have been calling for governments to finally take action on climate protection. Children's efforts to draw attention to environmental

⁶ cf. https://netzwerk-kinderrechte.de/wp-content/uploads/2021/06/DGD_Written_Contribution_deutsche_Version.pdf p.1.

crises were, as the Committee writes in the foreword, the motivation and impetus for GC 26. Governments should be held accountable for upholding children's rights and ensuring that children grow up in a safe, healthy environment.

Together with the UN Committee on the Rights of the Child terre des hommes has been working on GC 26 since the beginning of 2022, compiling the main content and coordinating the consultation process. The Child and Youth Welfare Association – AGJ, together with the National Coalition Germany – network for the implementation of the UN Convention on the Rights of the Child, has commented on the first draft presented at the end of 2022.⁷

Following the publication of GC 26, the focus is now on national and local implementation. The world's governments have been given the task of enacting effective national laws to protect the environment and ensure compliance with them.

Objectives of the General comment 26

The objectives of GC 26 were formulated by the UN Committee on the Rights of the Child as follows:

- Emphasize the urgent need to address the adverse effects of environmental degradation, with a special focus on climate change, on the enjoyment of children's rights;
- Promote a holistic understanding of children's rights as they apply to environmental protection;
- Clarify the obligations of States to the Convention and provide authoritative guidance on legislative, administrative and other appropriate measures to address environmental harm, with a special focus on climate change.

Although the present General comment 26 focuses on climate change, the Committee makes it clear that its application should not be limited to a specific environmental issue, as new environmental problems can arise from technological, economic development and social change. States should also ensure that GC 26 is widely disseminated, in different languages and accessible formats, to reach all relevant involved parties, especially children. (Item 5)

The Committee emphasises the importance of intergenerational justice and the interests of future generations, which were clearly expressed by the children and young people who were questioned. While the rights of children already living on earth require urgent attention, future generations also have a right to the full realisation of their human rights. The GC26 therefore emphasises that states bear responsibility not only for immediate environmental impact under the Convention but also for foreseeable environmental threats arising from their current actions or omissions that may not become apparent for many years or decades. The Committee also emphasises that children have a right to be recognised and fully respected as environmental actors. Special attention must be paid to the many obstacles that children in disadvantaged situations face when they want to exercise and claim their rights.

⁷ https://www.agj.de/fileadmin/files/arbeitsfelder/Kommentierung-General-Comment-26-AGJ_NC.pdf.

Obligations of the states

With GC 26, the UN Committee on the Rights of the Child calls on states to take decisive action. They should take concrete, binding measures to combat the climate crisis and assure the right to a clean, healthy and sustainable environment. Some of these formulated obligations are summarised here:

Legal dimension

The UN Committee on the Rights of the Child places the GC 26 in the context of current developments in international law, in which both the Human Rights Committee and the UN General Assembly have recognised the right to a clean, healthy and sustainable environment as a human right and considers it relevant, among other things, that legal developments and case law at regional level recognise the link between human rights and the environment. The Committee points out that this right is now also recognised and enshrined in numerous national, transnational and international legal systems. These developments, jurisdictions and legal instruments, such as international environmental law or the Paris Climate Agreement, are important for the interpretation of children's rights and these instruments must also be interpreted in the light of the Convention on the Rights of the Child. (Item 10)

Responsibility of states for measures to avert threats to life

States should take action now to ensure that children are protected from foreseeable, premature or unnatural death and from threats to their lives that may be caused by acts and omissions and by the activities of, for example, economic actors, and can enjoy their right to live in dignity. These measures include the adoption and effective implementation of environmental standards, for example in relation to air and water quality, food safety, lead exposure and greenhouse gas emissions, as well as any other appropriate and necessary environmental measures that protect children's right to life. (Item 20)

Participation

The GC 26 makes it clear that the voices of children and young people are important for environmental protection and that they can make valuable contributions. Their opinions should be actively involved, especially in solving long-term environmental problems. Disadvantaged children, for example, need special support in doing so. Children should have safe and accessible ways of speaking out on all environmental issues and should be educated about environmental and human rights. On an international level, the participation of children should be promoted and children's rights should be taken into account in international environmental decision-making processes. Youth participation should also include children – states must drive this forward. Digital tools can extend the participation opportunities of all young people. (Item 26 et seqq.)

Education / Education for sustainable development

The GC 26 emphasises that education is a central component of a child rights-based approach to the environment. Children in particular emphasise the importance of education for the protection of their rights and the environment, as well as for strengthening their environmental awareness. However, the right to education is particularly vulnerable to the effects of

environmental damage, as it can lead to school closures and interruptions, school dropouts and the destruction of educational institutions and playgrounds.

The GC 26 makes it clear that the right to education is also an immensely important right for educational staff. Ecological values should be present in the education and training of all those involved in education, including teaching methods, technologies and concepts in educational institutions and the preparation of children for green professions. Environmental education extends beyond formal school education and involves a variety of experiences and learning processes. Research-based, non-formal learning and practical approaches such as outdoor learning are effective ways of achieving this educational goal.

Health

In the GC 26, the UN Committee on the Rights of the Child addresses the current and expected psychosocial and mental illnesses of children caused by environmental damage, including climate change-related events. The GC 26 notes that there is a clear link between environmental damage and children's mental health, such as depression, and that this requires urgent attention from public health and education authorities in terms of response and prevention programmes.

Vulnerable groups/particularly vulnerable groups

States are obliged to effectively prevent, protect against and remedy both direct and indirect environmental discrimination. This is because the effects of environmental damage have a particularly discriminatory impact on certain groups of children, e. g. indigenous children, children belonging to minorities, children with disabilities and children living in disaster-prone or climatically vulnerable areas.

Welfare of the child

Child welfare (Art. 3 UN CRC) shall be a primary consideration in the adoption and implementation of environmental decisions, including laws, regulations, policies, standards, guidelines, plans, strategies, budgetary decisions, international agreements and the provision of development assistance.

In cases where an environmental policy decision may have a significant impact on children, it is appropriate to implement a more detailed process to assess and determine the best interests of the child, providing opportunities for the effective and meaningful participation of children. (Item 16)

Play, rest and leisure

States should take measures to ensure that all children can play in a safe and healthy environment without discrimination. Children's opinions should be taken into account in urban and rural planning in order to create a favourable environment. This includes safe and affordable access to easily accessible natural spaces and the creation of safe play areas free from pollution and hazardous substances. Measures should also be taken to reduce pollutants in the vicinity of households, schools and playgrounds.

In addition, states should introduce laws and regulations that set safety standards for toys and recreational facilities, particularly with regard to toxic substances, in urban and rural development projects. In climate change-related disasters, measures should be taken to restore and protect these rights of children, including the creation or restoration of safe spaces and the promotion of play and creative expression to strengthen resilience and psychological healing. (Item 59 et seqq.)

Adoption and effective implementation of environmental standards

Among other things, the UN Committee on the Rights of the Child calls for measures to improve the environmental conditions for children. These include reducing air pollution, particularly with regard to children under the age of 5, in order to reduce child mortality. In addition, access to clean water, sanitary facilities and healthy aquatic ecosystems should be guaranteed in order to prevent water-related diseases in children. The conversion of industrial agriculture and fisheries to sustainable and healthy food production is intended to combat malnutrition and promote the growth and development of children. A just phase-out of the use of coal, oil and gas is necessary to tackle the climate crisis by promoting renewable energy, energy storage and energy efficiency. The preservation of biodiversity is of crucial importance. Marine pollution should be prevented by banning hazardous substances that jeopardise both children's health and marine ecosystems. In addition, toxic substances, especially developmental neurotoxins, must be strictly regulated or even banned from manufacture, sale, use and release if they have disproportionately harmful effects on children. (Item 65)

Inclusion of the right to a clean, healthy and sustainable environment in national legislation

States should include the right of children to a clean, healthy and sustainable environment in their national legislation and take appropriate measures to implement it in order to strengthen accountability.

This right should be considered in all decisions and actions affecting children, including policies on education, leisure, play, access to green spaces, child protection, child health and migration, as well as national frameworks for the implementation of the Convention. (Item 67)

Collection of data

States should ensure the collection of reliable, regularly updated and itemised data and research on environmental harm, including the risks and actual impacts of climate change-related harm on children's rights. They should include longitudinal data on the impact of environmental degradation on children's rights, in particular on health, education and living standards at different ages. Such data and research should be incorporated into the formulation and evaluation of environmental laws, policies, programmes and plans at all levels and must be made publicly available. (Item 74)

What needs to happen now: Recommendations and demands of the AGJ

The state obligations stated in the GC26 address the governments of the countries that have signed the UN CRC. The measures, expectations and obligations formulated in GC No. 26 must therefore first be tackled by the federal government and pursued in a structured manner. Much of this requires resources and massive efforts in order to be realised. In addition, many

of the aspects require cross-departmental action in order to focus on children and the environment and fulfil the expectations of GC No. 26. Child and Youth Welfare can provide support here and implement and supervise individual measures. However, the urgency of action, the breadth of the necessary measures and the responsibility require action by all state actors and civil society.

In order to fulfil the obligations set out in the General comment of the UN Committee on the Rights of the Child in connection with environmental protection and children's rights in Germany, the following measures should be taken:

State measures:

A first measure should be to **recognise the right to a clean, healthy and sustainable environment for children** in national legislation. In addition, the federal government must ensure that this right is taken into account in all measures and regulations, in budgetary decisions and in public services, tenders and funding measures. To this end, children's rights officers at all political levels could be useful to draw attention to the children's rights dimension of measures and to monitor and demand a consistent focus on young people and compliance with children's environmental rights. A climate check, which examines legislative proposals for climate friendliness and with reference to children's rights, could strengthen this endeavour.

The individual **ministries should** be required to examine and explain the extent to which their measures affect children's environmental rights and to consistently orientate their policies to the guidelines of GC 26. At the same time, cooperation between the departments should be promoted with the aim of guaranteeing children's ecological rights.

In addition to complying with the Paris Agreement and the 1.5-degree target, Germany should ensure that it takes **responsibility for foreseeable environmental threats** over and above its direct obligations under existing environmental agreements. This can mean considering the long-term consequences of current environmental impacts and taking appropriate measures or reviewing the effectiveness of the measures already agreed and tightening them up if necessary.

The federal government should **take comprehensive measures to safeguard children's right to a life in dignity and protection from premature death**. This includes the adoption and effective implementation of environmental standards relating, for example, to air and water quality, food safety, lead exposure and greenhouse gas emissions. In addition, it should take targeted measures to improve the data situation on environmental pollution to which children are exposed, differentiated according to regional and social criteria. National, regional and municipal measures should be geared towards reducing these burdens. The highest priority should be given to areas and groups of children that are particularly affected. This includes, for example, children in neighbourhoods with heavy traffic and emissions, children with chronic illnesses and disabilities, poor children and others. The rights of children who are exposed to climate-induced migration should also be recognised in this context.

It is important to emphasise that these obligations must be implemented not only at federal level, but also at state and municipal level.

The **involvement of children and young people in the political decision-making process** is also of crucial importance. It should be supported by the exemplary promotion of different measures for child and youth participation and an extension of effective participation approaches. The establishment of a children's environmental advocate at federal level could also be considered, to whom children could address their environmental complaints.

The implementation of these demands requires **close cooperation** between the federal government, the federal states and local authorities, and not least civil society, as well as continuous dialogue and evaluation of progress to ensure that children's rights are adequately protected in the context of environmental protection and the climate crisis. This also includes ensuring that children can assert their rights accordingly.

Child and youth welfare measures

Child and youth welfare in Germany can be an important partner in accompanying and supporting measures initiated by the states through the GC and making them a topic of discussion with children and young people. It is important to check their own programmes, measures, models and buildings for their climate compatibility and to work on reducing existing climate-hostile situations (emissions, unrenovated buildings, etc.).

Child and youth welfare in Germany could and should be an actor that helps to ensure that this GC 26 is widely disseminated to all stakeholders, especially children, and made available in different languages and formats, including age-appropriate and accessible versions. This can be done by creating **child-friendly versions** and making the GC 26 a topic in the programmes and structures of child and youth services.

Another point is **the raising of environmental awareness**. This is where child and youth welfare services can develop and promote programmes that convey ecological values and environmental awareness to children and young people. This can help to promote understanding of environmental issues, strengthen commitment to environmental protection and broaden the view of global challenges and injustices.

The **participation of young people** is of immense importance in all these measures. Here, child and youth welfare in particular can create mechanisms that enable children and young people to actively participate in decision-making processes in the field of environmental protection. This can include the establishment of youth councils or other opportunities for participation. In addition, child and youth welfare in Germany should be actively involved in the social environment and support young people in getting involved and speaking out in favour of their issues. Child and youth welfare professionals must act as **advocates for the interests of young people** and repeatedly raise the issue of the climate crisis and its consequences for young people. Child and youth welfare should ensure that disadvantaged young people receive appropriate support and resources to protect their rights in relation to an intact environment.

Child and youth welfare in particular can help to create safe and accessible **leisure opportunities in a healthy environment**. This can include the design of playgrounds, nature experiences and leisure activities or the commitment to leisure opportunities for young people.

In all of this, child and youth welfare must and should work closely with other departments and government agencies in order to fulfil the environmental protection obligations set out in children's rights. This may include cooperation with the education sector, the health sector, the Ministry of the Environment and others.

At the same time, in view of the rapidly deteriorating environmental conditions, civil society actors in child and youth welfare will foreseeably be in greater demand, together with other civil society partners, to support young people in **asserting and enforcing their rights** under the UN CRC. The "strategic litigation" approach is still little known in Germany. At the same time, (constitutional) lawsuits such as that brought by the Fridays for Future movement against the inadequate Climate Protection Act of the then Federal Government show what a resounding effect strategic litigation can have on politics and legislation. Child and youth welfare should therefore take a closer look at this approach and its obligation to support young people's complaints.⁸

Thinking the GC further

GC 26 makes little mention of refugee movements as a result of the climate crisis. In their comments on the draft, the AGJ and the NC pointed out that the effects on particularly vulnerable groups should be considered in this context.⁹ It is not only acute disasters that lead to migration. It has already been predicted that the permanent collapse of habitats due to the climate crisis will become the most important trigger for global migration movements. The rights of particularly vulnerable groups must also be protected in the resulting migration movements. Child and youth welfare, among others, works closely with these – which is another reason why their advocacy work, which does not end at the borders of the nation state, is indispensable for climate justice.

In addition, the AGJ suggests that states should also consider environmental children's rights in their five-yearly report on the progress made in implementing the UN CRC. For this reason, the AGJ and the NC proposed in the commentary that the climate protection measures of all states that have ratified the UN CRC should be made a permanent reporting item in the UN dialogue in the state reporting procedure. For example, via a permanent question in the conflict score list or queried as part of the Universal Periodic Review procedure¹⁰.

Precise instruments and monitoring of states in climate protection are needed, if not a further development of the Convention itself. Experience shows that the concluding observations of

⁸ GC No. 26, Articles 84 and 85: 84) Mechanisms should be available for claims of imminent or foreseeable harm and past or current violations of children's rights. States should ensure that these mechanisms are readily available to all children under their jurisdiction, without discrimination, including children outside their territory affected by transboundary harm resulting from States' acts or omissions occurring within their territories.

85) States should provide for collective complaints, such as class action suits and public interest litigation, and extend the limitation periods regarding violations of children's rights due to environmental harm.

⁹ https://www.agj.de/fileadmin/files/arbeitsfelder/Kommentierung-General-Comment-26-AGJ_NC.pdf.

¹⁰ The UPR is an instrument of the United Nations Human Rights Council established in 2006. It provides for the regular review of the human rights situation in all 193 UN member states - as part of a peer review process by other states and civil society. This ensures for the first time that the protection and promotion of human rights is not an "internal affair" in any country in the world and that all states are scrutinised equally. (<https://www.bmeia.gv.at/themen/menschenrechte/universal-periodic-review/>).

the UN human rights committees have so far received too little attention in the various efforts to realise human rights.

Board of the Child and Youth Welfare Association – AGJ

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