



**THE GLOBAL NETWORK  
FOR HUMAN RIGHTS  
AND THE ENVIRONMENT**

White Paper on the Right of the Child to a Safe,  
Clean, Healthy and Sustainable Environment



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This White Paper was written by a working group of the Global Network of Human Rights and the Environment (GNHRE). The working group has prepared the white paper to inform the consultation on the right of the Child to a safe, clean, healthy and sustainable environment as part of the Draft general comment No. 26 on children’s rights and the environment with a special focus on climate change. The GNHRE has contributed to the consultation in partnership with Terre des Hommes and Child Rights Connect.

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## 1. Introduction

Across the globe, people are living in conditions of extreme and worsening environmental distress. These conditions result from centuries of colonial and industrial development, pursued without regard for the environment or the lives, livelihoods, and traditional practices of much of humankind. Today, we face a triple planetary crisis of climate change, environmental pollution, and biodiversity loss. The detrimental impacts of changing climates, large scale pollution and collapsing ecosystems on human health and well-being are undeniable.<sup>1</sup> The United Nations (UN) Secretary General António Guterres (UNSG) warned that “[w]e stand at a critical juncture in our collective efforts to limit dangerous global heating.”<sup>2</sup> Advances in climate and environmental science now forecast an uncertain and probably dire future. The Covid-19 pandemic and escalating conflict in different parts of the world have only contributed to our precarious and urgent condition.<sup>3</sup> As Guterres recently put it, “Covid and climate change have brought us to a threshold ... a moment of truth.”<sup>4</sup>

Climate change, environmental pollution, and biodiversity pose a significant threat to humanity but are particularly threatening to children. In 2015, the UN International Children’s Emergency Fund (UNICEF) warned that “[t]here may be no greater, growing threat facing the world’s children – and their children – than climate change.”<sup>5</sup> Increasingly frequent and severe weather events, food and water shortages, air pollution, increased transmission of vector-borne and infectious diseases, slow-onset processes such as rising sea levels, among others, have a disproportionate and devastating impact on the health, development, psychological and physiological well-being of children.<sup>6</sup> The Intergovernmental Panel on Climate Change (IPCC)’s most recent report specifically highlighted the mental health challenges expected to increase under

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<sup>1</sup> UN Secretary-General, ‘Alongside Pandemic, World Faces ‘Triple Planetary Emergency’, Secretary-General Tells World Forum for Democracy, Citing Climate, Nature, Pollution’ (16 November 2020) Press Release SG/SM/20422 <[www.un.org/press/en/2020/sgsm20422.doc.htm](http://www.un.org/press/en/2020/sgsm20422.doc.htm)> accessed 8 March 2022.

<sup>2</sup> UN Secretary-General, ‘Secretary-General’s remarks at opening ceremony of UN Climate Change Conference COP25 [as delivered]’ (2 December 2019) <[www.un.org/sg/en/content/sg/statement/2019-12-02/secretary-generals-remarks-opening-ceremony-of-un-climate-change-conference-cop25-delivered](http://www.un.org/sg/en/content/sg/statement/2019-12-02/secretary-generals-remarks-opening-ceremony-of-un-climate-change-conference-cop25-delivered)> accessed 8 March 2022.

<sup>3</sup> Isabelle Gerretsen, ‘The state of the Climate in 2021’ *BBC Future* (10 January 2021) <<https://www.bbc.com/future/article/20210108-where-we-are-on-climate-change-in-five-charts>> accessed 8 March 2022.

<sup>4</sup> UN Secretary-General, ‘Secretary General’s address at Columbia University: The State of the Planet’ (2 December 2020), <[www.un.org/sg/en/content/sg/speeches/2020-12-02/address-columbia-university-the-state-of-the-planet](http://www.un.org/sg/en/content/sg/speeches/2020-12-02/address-columbia-university-the-state-of-the-planet)> accessed 8 March 2022.

<sup>5</sup> UNICEF, ‘Unless We Act Now: The Impact of Climate Change on Children’ (2015) <[www.unicef.org/reports/unless-we-act-now-impact-climate-change-children](http://www.unicef.org/reports/unless-we-act-now-impact-climate-change-children)> accessed 8 March 2022.

<sup>6</sup> See Office of the United Nations High Commissioner for Human Rights (UNOHCHR), ‘Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child: report of the Office of the United Nations High Commissioner for Human Rights’ (4 May 2017) UN Doc A/HRC/35/13 <<https://digitallibrary.un.org/record/1298393>> accessed 8 March 2022.



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further global warming, particularly for children and adolescents.<sup>7</sup> The vulnerabilities of children are often exacerbated for those who face intersecting marginalisation due to their economic conditions, race, disabilities, status as migrants and other features that increase their vulnerability. The inequalities experienced by girls and young women, particularly those in vulnerable situations, are also amplified by the impacts of climate change.<sup>8</sup>

According to UNICEF, “approximately 1 billion children – nearly half of the world’s children – live in countries that are at an ‘extremely high-risk’ from the impacts of climate change,” while “almost every child on earth is exposed to at least one climate and environmental hazard, shock or stress such as heatwaves, cyclones, air pollution, flooding and water scarcity.”<sup>9</sup> The World Health Organization (WHO) stresses that children, especially those under the age of five, are among the most affected by environmental impacts.<sup>10</sup> Moreover, approximately 5.2 million children under the age of five die every year, mostly from preventable and treatable causes, including 1.5 million deaths due to environmental harm such as toxic air pollution and chemicals.<sup>11</sup> Climate-related disasters are also driving the migration and displacement of millions of children worldwide, while similar numbers are trapped and unable to leave high-risk areas. In 2020 alone, around 10 million children were forced from their homes due to climate-related disasters, three times as many as displaced by conflict and violence the same year.<sup>12</sup> These horrific numbers undeniably highlight children’s vulnerability in the face of climate change and environmental damages and the crucial necessity to efficiently implement adequate protection of children’s human rights.

The need to recognise specific rights and ensure certain protections for children was stated in the Geneva Declaration of the Rights of the Child of 1924, the 1959 Declaration of the Rights of the Child adopted by the UN General Assembly (UNGA), the Universal Declaration of Human Rights (1945), as well as in the International Covenant on Civil and Political Rights (article 24)

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<sup>7</sup> Intergovernmental Panel on Climate Change, ‘Climate Change 2022. Impacts, Adaptation and Vulnerability: Summary for Policymakers’ (2022) 16 <[https://report.ipcc.ch/ar6wg2/pdf/IPCC\\_AR6\\_WGII\\_SummaryForPolicymakers.pdf](https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf)> accessed 8 March 2022 (IPCC, ‘Climate Change 2022’).

<sup>8</sup> Report A/HRC/35/13 (n 6) para 21-22; Plan International, ‘5 Ways Climate Change is Disrupting Girls’ Lives’ <<https://plan-international.org/emergencies/5ways-climate-change-disrupting-girls-lives>> accessed 8 March 2022.

<sup>9</sup> UNICEF, ‘The Climate Crisis is a Child Rights Crisis: Introducing the Children’s Climate Risk Index (Summary Report)’ (August 2021) 4 <[www.unicef.org/media/105531/file/UNICEF\\_climate%20crisis\\_child\\_rights\\_crisis-summary.pdf](http://www.unicef.org/media/105531/file/UNICEF_climate%20crisis_child_rights_crisis-summary.pdf)> accessed 8 March 2022.

<sup>10</sup> World Health Organization, ‘Preventing Disease Through Healthy Environments: A Global Assessment of the Burden of Disease from Environmental Risks’ (2016) <[https://apps.who.int/iris/bitstream/handle/10665/204585/9789241565196\\_eng.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/204585/9789241565196_eng.pdf?sequence=1)> accessed 8 March 2022; World Health Organization, ‘Don’t pollute my future! The impact of the environment on children’s health’ (21 March 2017) <[www.who.int/publications/i/item/WHO-FWC-IHE-17.01](http://www.who.int/publications/i/item/WHO-FWC-IHE-17.01)> accessed 8 March 2022.

<sup>11</sup> WHO, ‘The Cost of a Polluted Environment: 1.7 Million Child Deaths a Year, Says WHO’ (6 March 2017) News Release <[www.who.int/news/item/06-03-2017-the-cost-of-a-polluted-environment-1-7-million-child-deaths-a-year-says-who](http://www.who.int/news/item/06-03-2017-the-cost-of-a-polluted-environment-1-7-million-child-deaths-a-year-says-who)> accessed 8 March 2022; WHO, ‘Inheriting a Sustainable World? Atlas on Children’s Health and the Environment’ (2017) <[www.who.int/publications/i/item/9789241511773](http://www.who.int/publications/i/item/9789241511773)> accessed 8 March 2022; WHO, ‘Children: Improving Survival and Well-being’ (8 September 2020) <[www.who.int/news-room/fact-sheets/detail/children-reducing-mortality](http://www.who.int/news-room/fact-sheets/detail/children-reducing-mortality)> accessed 8 March 2022.

<sup>12</sup> Save the Children, ‘Walking into the Eye of the Storm: How the Climate Crisis is Driving Child Migration and Displacement’ (October 2021) <<https://resourcecentre.savethechildren.net/pdf/Eye-of-the-Storm.pdf>>.



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and the International Covenant on Economic, Social and Cultural Rights (article 10). In 1989, the UNGA adopted the Convention on the Rights of the Child (UNCRC), an international treaty aiming to ensure that States respect, protect, and fulfil children's rights. The UNCRC, the most widely ratified human rights treaty in the world, enshrines inalienable and universal human rights for the children of the world, such as the right to life (article 6), the right to the highest attainable standard of health (article 24), and the right to education (article 28). Three optional protocols to the UNCRC have been approved, relating to the involvement of children in armed conflict, the sale of children, child prostitution and child pornography, and establishing a communications procedure, enabling children whose rights have been violated to complain directly to the UN Committee on the Rights of the Child (CRC).

In June 2021, the CRC committed to a General Comment on children's rights and the environment with a special focus on climate change.<sup>13</sup> The development of the new general comment puts forward strategic questions related to children's rights to a healthy environment, currently under discussion as the CRC hosts a series of consultations to inform that process.

As a network of scholars and practitioners working in diverse spheres of influence that focus on the intersection of human rights and the environment, the GNHRE is uniquely placed to contribute to that discussion. This White Paper draws on the work of several expert scholars and practitioners. These experts have researched and analysed the statements and reports of UN Special Rapporteurs and UN bodies, and closely assessed the current state of the policy and law on children's rights and the environment to contribute to the progressive development of international law. This White Paper poses critical questions on the meaning and scope of the child's right to a healthy environment, including:

- What does the right of the child to a safe, clean, healthy and sustainable environment entail?
- What are the impacts of environmental harm on children from marginalised communities?
- Are future generations protected by the right to a healthy environment and, if so, what does this mean and require?
- What are States' obligations related to the rights of the child to a healthy environment?
- What other rights have a bearing on the right of the child to a healthy environment?
- Can children have their say and what are their procedural rights?

In our collective effort to raise and offer answers to these questions, we have conducted extensive desk research into recent scholarship, key developments in international law and, to a more limited extent, domestic law, judicial findings and emerging litigation, civil society reports,

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<sup>13</sup> UNOHCHR, 'The UN Committee on the Rights of the Child Commits to a New General Comment on Children's Rights and the Environment with a Special Focus on Climate Change' <[www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27139&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27139&LangID=E)> accessed 8 March 2022.



key policy documents, statements, recommendations, and a range of other political and legal documents that shed light on the state and meaning of the rights of the child to a safe, clean, healthy and sustainable environment.

This White Paper is by no means comprehensive, and its goal is not to provide an exhaustive overview of all relevant materials and literature. Instead, this White Paper aims to give some insight into existing practice, current debates and key gaps in the understanding and realisation of the right to a healthy environment for all children. In addition, this is a working document that aims to provide helpful background for the consultation on children's rights and the right to a healthy environment as part of the Draft general comment No. 26 on children's rights and the environment. This White Paper will continue to evolve and develop both during and after the consultation, and we welcome inputs and suggestions (which should be sent to [gnhrewebsite@gmail.com](mailto:gnhrewebsite@gmail.com)).

## **2. What does the right of the child to a safe, clean, healthy and sustainable environment entail?**

The right to a safe, clean, healthy and sustainable environment recognises the undeniable link between human health and well-being and the state of the natural environment. It recognises that a safe, clean and healthy environment is a necessary precondition to realising a host of other human rights. It is a right that encompasses several other human rights, including the right to clean air, access to safe water, a safe climate, healthy and sustainably produced food, and adequate sanitation, non-toxic environments in which to live, work and play among others.

UNHRC resolution A/HRC/45/L.48 on 'the rights of the child: realising the rights of the child through a healthy environment'<sup>14</sup> stipulates that States have an obligation to respect, protect, and fulfil human rights and to address environmental harm. The resolution urges States to realise the rights of children by recognising the right to a healthy environment in national legislation to ensure the rights of both present and future generations.

Additionally, the UNHRC urges States to ensure that children have access to justice and timely, effective, inclusive remedies when exposed to violations or abuse of their rights through the effects of environmental harm. This historic resolution calls for the inclusion of the right to a healthy environment as integral to the rights of the child and acknowledges that preventing environmental harm through the recognition of the child's right to a healthy environment is the most effective way to fully protect children and their human rights. A number of states have taken measures and adopted laws that attempt to address this.

### **Children's environmental rights in domestic law**

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<sup>14</sup> UN Human Rights Council (HRC), 'Rights of the Child: Realizing the Rights of the Child Through a Healthy Environment' (13 October 2020) UN Doc A/HRC/RES/45/30 <<https://undocs.org/A/HRC/RES/45/30>>.





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Some domestic legal frameworks already recognise the right of children to a healthy environment. This right is part of specialised domestic codes and laws that specifically address the rights and duties of children. Among the countries with best practices are five from Central and South America (Colombia, Peru, Bolivia, El Salvador, and Mexico), one from Africa (Benin), and one from Asia (Vietnam).

Bolivia's code for Children and Adolescents explicitly recognises "the right of girls, boys, and adolescents to a healthy and ecologically balanced environment" (art. 33).<sup>15</sup> The right to water and sanitation is also recognised (art. 34). Furthermore, as a part of the right to education, girls, boys, and adolescents have the right to receive education on environmental protection and care, among other duties (art. 115). Finally, Bolivia's code explicitly states children and adolescents' have a duty to take care of the environmental resources of the nation (art. 158).

Colombia's Code of Childhood and Adolescence<sup>16</sup> also specifically states that children and adolescents have the right to life, to a good quality of life, and a healthy environment that serves the enjoyment of other rights (art. 17).

In 2011, El Salvador enacted a special Law for the protection of the rights of children.<sup>17</sup> Article 35 explicitly recognises the right of girls, boys and adolescents to enjoy a healthy environment that is adequate and ecologically sustainable for their development.

Similarly, Mexico's General Law of the Rights of Girls, Boys and Adolescents<sup>18</sup> includes the right to live in a healthy and sustainable environment (art. 43). This article also states that the right includes necessary conditions that allow the children and adolescents' development, well-being, and healthy upbringing, which concerns physical, mental, material, spiritual, ethnic, cultural and social development.

The Peruvian New Code of Children and Adolescents<sup>19</sup> provides that children have the right to live in a healthy and ecologically balanced environment (art. 3, Chapter I on civil rights). Likewise, the Children's Code of Benin<sup>20</sup> states that all children have the right to live in a healthy and peaceful environment (art. 17) as well as the duty to respect the environment and contribute to making it a healthy place for all (art. 44).

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<sup>15</sup> Code for Children and Adolescents (Código Niña, Niño y Adolescente), Lawy No. 548 (17 July 2014) (BOL).

<sup>16</sup> Colombia's Law 1098 of 2006 <[www.icbf.gov.co/cargues/avance/docs/ley\\_1098\\_2006.htm](http://www.icbf.gov.co/cargues/avance/docs/ley_1098_2006.htm)>.

<sup>17</sup> Decreto Legislativo núm. 839 que dicta la Ley de Protección integral de la niñez y adolescencia (16 March 2009) (ELSL) <[www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=es&p\\_isn=84535&p\\_country=SLV&p\\_count=316](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=es&p_isn=84535&p_country=SLV&p_count=316)>.

<sup>18</sup> Ley General de los Derechos de Niñas, Niños y Adolescentes (amended 20 June 2018) (MEX) <[www.gob.mx/sipinna/documentos/ley-general-de-los-derechos-de-ninas-ninos-y-adolescentes-reformada-20-junio-2018#:~:text=Tiene%20por%20objeto%2C%20entre%20otros,\(DOF\)%2020%20junio%202018](http://www.gob.mx/sipinna/documentos/ley-general-de-los-derechos-de-ninas-ninos-y-adolescentes-reformada-20-junio-2018#:~:text=Tiene%20por%20objeto%2C%20entre%20otros,(DOF)%2020%20junio%202018)>.

<sup>19</sup> Código De Los Niños Y Adolescentes (24 December 1992) (PERU)

<<https://www4.congreso.gob.pe/comisiones/1998/mujer/cna.htm#:~:text=Todo%20ni%C3%B1o%20y%20adolescente%20tienen%20derecho%20a%20la%20libertad.en%20comisi%C3%B3n%20flagrante%20de%20delito.&text=El%20ni%C3%B1o%20y%20adolescente%20tienen,y%20a%20ser%20cuidado%20por%20%C3%A9stos>>.

<sup>20</sup> Loi n° 2015-08 portant code de l'enfant en République du Benin (23 January 2015)

<[www.africanchildforum.org/clr/Legislation%20Per%20Country/2018%20Update/Benin/benin\\_thechildcode\\_2015\\_fr.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/2018%20Update/Benin/benin_thechildcode_2015_fr.pdf)>.





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Lastly, the Environmental Protection Law of Vietnam<sup>21</sup> provides that environmental protection must be in harmony with guaranteeing children's rights to ensure the human right to live in a pure environment. It elevates this provision to the status of a principle of environmental protection (art. 4(2)). The Vietnamese Children Law,<sup>22</sup> on the other hand, includes the right of children to be protected from natural disasters and environmental pollution (art. 31) as well as children's responsibility to protect the environment and natural resources (art. 39).

Because the right to a healthy environment is essential for the protection of the realisation and enjoyment of other children's basic human rights, the above-mentioned national children's rights should be seen as best practices that other countries should adopt in their domestic legislation.

### **A. The right to a safe, clean, healthy and sustainable environment: a rights tapestry**

While the right of the child to a safe, clean, healthy and sustainable environment should be protected in and of itself, it is also essential to recognise that it encompasses and is interwoven with several other rights. It is part of a rights tapestry. Recognising and securing the right to a healthy environment is done by realising a range of other connected rights. These rights, in turn, can only be protected when the right to a healthy environment is protected.

#### **i. A healthy environment and the rights of the child to health, life and development**

The UNCRC does not explicitly mention the right of the child to a safe, clean, healthy and sustainable environment, but it does protect the right in several ways. It requires parties to pursue full implementation of the rights of the child to the enjoyment of the highest attainable standard of physical and mental health by taking measures to combat disease and malnutrition, including through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution (article 24, § c). In addition, the UNCRC is the only UN human rights treaty that makes explicit references connecting children's rights and the environment, including (i) the link between child's rights to the highest attainable standard of health, which includes rights to nutritious food and safe drinking water, with issues of environmental pollution (article 24), and (ii) its definition of children's right to information on environmental health issues and identification of environmental education as one of the goals of education (article 29).

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<sup>21</sup> Vietnam Environmental Protection Law 2014 (23 June 2014) <<https://vietnamlawenglish.blogspot.com/2014/06/vietnam-environmental-protection-law.html#:~:text=This%20Law%20provides%20statutory%20provisions.with%20the%20environmental%20protection%20task>>

<sup>22</sup> Children Law (5 April 2016) (VT) <[www.ilo.org/dyn/natlex/docs/ELECTRONIC/103522/125796/F-1725767197/VNM103522%20Eng.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103522/125796/F-1725767197/VNM103522%20Eng.pdf)>.



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These explicit references to the environment – together with the general principles of non-discrimination, the best interest of the child, right to life, survival and development, and respect for the views of the child (articles 2, 3, 6 and 12 UNCRC) – offer an excellent normative basis for strengthening environment-related children’s rights. For example, in 2013, the CRC noted the relevance of the environment to children’s health and the need to address climate change since it is “one of the biggest threats to children’s health,” which exacerbates health disparities.<sup>23</sup> The CRC recommended that States include children’s health concerns at the heart of their strategies to mitigate and adapt to climate change.<sup>24</sup> Moreover, in its State reporting procedure, the CRC referred to the children’s right to a healthy environment and expressed its concerns about the impacts of climate change on their rights, stressing the need to integrate children’s special vulnerabilities, views and needs into national strategies and actions addressing climate change and disaster risk management.<sup>25</sup> Incidentally, in the 2021 decision in *Sacchi et al., v. Argentina et al.*, the CRC found that the youth are victims of foreseeable threats to their rights to life, health, and culture and that a sufficient causal link exists between the harm alleged by children due to climate change and the acts or omissions of the States in preventing it.<sup>26</sup> The CRC held that States are legally responsible for the harmful effects of carbon emissions originating in their territory on children both inside and outside their territory.

Likewise, in a 2016 resolution, the UN High Commissioner for Human Rights (UNHCHR) recognised that “children are among the most vulnerable to climate change, which may have a serious impact on their enjoyment of the highest attainable standard of physical and mental health, access to education, adequate food, adequate housing, safe drinking water and sanitation.”<sup>27</sup> The UNHRC encouraged relevant special procedures “to consider the issue of climate change and human rights, including the adverse impact of climate change on the enjoyment of children’s rights.”<sup>28</sup>

In 2017, the UNHCHR also published an analytical study examining the consequences of climate change on children and the human rights obligations and responsibilities of States and other stakeholders.<sup>29</sup> The UNHCHR concluded that the impacts of climate change undeniably interfere with the effective enjoyment of the rights enshrined in the UNCRC, including the rights to life, family relations, the highest attainable standard of health, adequate standard of living,

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<sup>23</sup> UN Committee on the Rights of the Child (CRC), *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)* (17 April 2013) UN Doc CRC/C/GC/15, para 50.

<sup>24</sup> *Ibid.*

<sup>25</sup> See, for instance, the CRC’s concluding observations to: Cameroon (UN Doc CRC/C/CMR/CO/2); Brazil (UN Doc CRC/C/BRA/CO/2-4); Australia (UN Doc CRC/C/AUS/CO/5-6); and Tuvalu (UN Doc CRC/C/TUV/CO/2-5).

<sup>26</sup> UNCRC, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019* (8 October 2021) UN Doc CRC/C/88/D/104/2019 <<https://undocs.org/CRC/C/88/D/104/2019>>.

<sup>27</sup> UN Human Rights Council (HRC), *Resolution 32/33 on Human Rights and Climate Change* (1 July 2016) UN Doc A/HRC/RES/32/33 <<https://undocs.org/A/HRC/RES/32/33>>.

<sup>28</sup> *Ibid.*, para 8.

<sup>29</sup> UN High Commissioner for Human Rights (HCHR), *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child* (4 May 2017) UN Doc A/HRC/35/13 <<https://undocs.org/A/HRC/35/13>>.



education, freedom from any form of violence or exploitation, recreation and play, and the enjoyment of one's culture, and that States and other duty bearers, including businesses, must protect children's rights from the effects of climate change.<sup>30</sup>

A 2018 report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment focused on children's environmental rights highlights the myriad of children's rights infringed by environmental harm and concludes that a "healthy environment is necessary for children's enjoyment of the rights to life, development and health."<sup>31</sup> Environmental harm interferes with the enjoyment of the rights to food, housing, water and sanitation, and an adequate standard of living and prevents children from enjoying their rights in the future and often throughout their lives.<sup>32</sup>

**ii. A safe, clean, healthy and sustainable environment and the rights of the child to rest, leisure and culture**

Additionally, the UNCRC recognises children's right to rest and leisure, to play and to participate freely in cultural life and the arts, which it qualifies as critical to "the health and well-being of children and promote the development of creativity, imagination, self-confidence and self-efficacy, as well as physical, social, cognitive and emotional strength and skills."<sup>33</sup> Play and recreation are essential for children to learn, experiment and develop "capacities to negotiate, regain emotional balance, resolve conflicts and make decisions."<sup>34</sup> As such, access to a healthy and safe environment is essential. The Special Rapporteur's report emphasises that many children, especially those living in poverty, face hazardous conditions when they play outside due to polluted water, open waste sites, toxic substances and the lack of safe green spaces.<sup>35</sup> Children who cannot play outside without exposing themselves to environmental harms cannot fully enjoy their right to play and recreation.<sup>36</sup>

Similarly, the Special Rapporteur on cultural rights has stated that the environmental crisis and climate change will impact the enjoyment of cultural rights due to the destruction and damage to cultural heritage caused by natural disasters such as wildfires, floods, droughts, and pollution.<sup>37</sup> Therefore, the Special Rapporteur has called on governments to regularly assess the impacts of

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<sup>30</sup> Ibid, paras 50, 52.

<sup>31</sup> UNHRC, *Children's Rights and the Environment: Report of the Special Rapporteur on Human Rights and the Environment* (24 January 2018) UN Doc A/HRC/37/58 <<https://undocs.org/A/HRC/37/58>> (Report A/HRC/37/58) at para 33, citing Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The right to the Highest Attainable Standard of Health (art 12)* (11 August 2000), para 4; CRC, *General comment No. 7 (2005): Implementing Child Rights in Early Childhood* (20 September 2006) UN Doc CRC/C/GC/7/Rev.1, para 10; CRC, *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)* (17 April 2013) UN Doc CRC/C/GC/15, para 2.

<sup>32</sup> Ibid, para 35.

<sup>33</sup> Ibid, para 36, citing CRC, *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)* (17 April 2013) UN Doc CRC/C/GC/17, para 9.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid, para 36, citing CRC, *General comment No. 17 (2013)* UN Doc CRC/C/GC/17, para 35.

<sup>36</sup> Ibid.

<sup>37</sup> UNHRC, *Visit to Tuvalu: Report of the Special Rapporteur in the field of cultural rights, Karima Bennoune* (24 December 2020) UN Doc A/HRC/46/34/Add.1 <<https://undocs.org/A/HRC/46/34/Add.1>>.



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climate change and environmental disasters on human rights, including the enjoyment of cultural rights, as well as on various social groups, such as youth, women, persons with disabilities, persons living in poverty, and minorities.<sup>38</sup>

**iii. A safe, clean, healthy and sustainable environment and the rights of the child to education, information, and to have a say**

The Special Rapporteur on human rights and the environment further states that the UNCRC recommends that children’s education must include environmental education (“the development of respect for the natural environment”)<sup>39</sup> and that the child’s right to freedom of expression must include “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of the child’s choice.”<sup>40</sup> As such, the report recalls that public access to environmental information is necessary for individuals to better understand the impacts of environmental harm on their rights and that, for this purpose, States should collect, update and disseminate environmental information, but also provide affordable, effective and timely access to environmental information held by public authorities.<sup>41</sup>

Access to environmental information remains a critical concern. The CRC has identified some gaps in the available information on the effects of environmental harm on children, including:

- a lack of strong data on actual exposure and consequences of children to environmental harms in light of their vulnerabilities and conditions of life,
- a lack of long-term data on the impacts of environmental harm on children’s health and development at different ages,
- limited disaggregated data on children most at risk,
- limited data about the harmful effects of the loss of biodiversity and degradation of ecosystems on children, as well as
- a lack of general public information about the harmful effects of pesticides and other chemicals in food and other consumer products.<sup>42</sup>

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<sup>38</sup> Ibid.

<sup>39</sup> UNHRC, *Children’s Rights and the Environment: Report of the Special Rapporteur on Human Rights and the Environment* (24 January 2018) UN Doc A/HRC/37/58 <<https://undocs.org/A/HRC/37/58>>, para 40, citing article 29 of the UN General Assembly, *Convention on the Rights of the Child* (20 November 1989) 1577 UNTS 3 (UNCRC).

<sup>40</sup> Ibid, para 42, citing article 13 of the UNCRC.

<sup>41</sup> Ibid, paras 42-43.

<sup>42</sup> Ibid, para 44, citing CRC, *Report of the 2016 Day of General Discussion: Children’s Rights and the Environment* (23 September 2016) 16; UNHRC, *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes* (2 August 2016) UN Doc A/HRC/33/41, para 59 <<https://undocs.org/A/HRC/33/41>>.



The right of the child to a healthy environment demands recognition of the intersection between the well-being and health of children and the state of the environments in which they live. This suggests that States must ensure that the natural environment is protected and cared for, but the right extends much further. The right to a healthy environment is part of a tapestry of rights. It is interwoven with and has a mutually supportive relationship to these other rights - realising the right to a healthy environment requires that rights to water and sanitation, food, housing, access to education and information, culture and leisure are all realised, and ensuring that children have their say. Equally, securing these rights is only possible when the right to a healthy environment is protected. The enjoyment of many essential children’s human rights will be nothing more than illusory if no efforts are implemented to tackle the multiple environmental crises that threaten these rights. Therefore, the right to a healthy environment should be considered as being implicitly included in and necessary to the realisation of the child’s rights to have a say, to health, life, survival and development, culture, education and leisure, food and water, among other relevant rights enshrined by the UNCRC.

### **3. What are the impacts of environmental harm on children from marginalised communities?**

While all children are vulnerable to the impacts of environmental degradation, some children face intersecting practices of marginalisation and exclusion that place them in even greater jeopardy. The IPCC’s latest report reiterated that “[s]tructural vulnerabilities to climate change can be reduced” by “address[ing] inequities based on gender, ethnicity, disability, age, location and income (very high confidence)”.<sup>43</sup> Accounting for these different and often intertwined forms of marginalisation within the ambit of children’s rights is vital in tackling the impacts of the climate crisis and the effects of environmental harm more broadly.

The CRC and several UN Special Mandate Holders have identified a number of intersecting forms of marginalisation. These include but are not limited to Indigenous children, environmental and human rights defenders, internally displaced children, girls and young women, children with disabilities, children living in conditions of poverty, and children living in areas that experience or are vulnerable to environmental disasters. This section analyses these forms of marginalisation, defining how the environmental crisis particularly impacts each group.

#### **A. Indigenous communities**

The CRC highlighted that it is “particularly concerned about: (b) Indigenous communities’ forced eviction from their land as a result of land grabbing by ranchers, the development of extractive industries, illegal logging or other industrial projects, which severely undermines Indigenous children’s right to an adequate standard of living, health and a healthy environment;

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<sup>43</sup> IPCC, ‘Climate Change 2022’ (n 7), SPM.D.2.1.



(...) With reference to [this], the Committee is concerned about the negative effects of polluted air, water and soil, and of food contamination, on children's health."<sup>44</sup>

In some parts of the world, Indigenous children face disproportionate levels of poverty and discrimination. Like their parents, they carry the burden of generations of colonial and discriminatory governance systems that excluded them from political and administrative decision-making about their own lands and ways of life. Disruptions caused by forced removals, extractive industries on Indigenous land, and the degradation of Indigenous environments not only interfere with the ability of children to access food, water, education, health and family life but may also mean that Indigenous communities can no longer pass on cultural and spiritual traditions or traditional knowledge to their children. For Indigenous children, the right to a healthy environment has to be understood as intimately tied to identity, community, and culture rights.

Another area of concern for Indigenous children is the impact of the COVID-19 pandemic on the individual and collective rights of Indigenous peoples. In the Special Rapporteur's report,<sup>45</sup> Indigenous children were among the most at-risk populations,<sup>46</sup> and a disproportionately high percentage of Indigenous children do not have access to the internet at home, which creates barriers to education and causes disengagement from learning.<sup>47</sup> The recommendation of the report that there should be "greater inclusion and participation of Indigenous peoples in the recovery process, to address their rights and unique needs, and [that there should be] ... increased support for Indigenous-led initiatives to sustain their cultures ... economies ... [and] recovery" echo the findings on other critical areas of concern, such as climate change,<sup>48</sup> climate finance, international investment agreements, (e.g., bilateral investment treaties (BITs) and investment chapters of free trade agreements (FTAs)).<sup>49</sup>

## **B. Human & Environmental Rights Defenders**

Children are often seen as passive and as subjects rather than agents in policy and law-making. Their "young age and alleged lack of maturity are used as grounds for not giving them a say in public affairs".<sup>50</sup> However, children are active agents of change and can fruitfully contribute to the public debate on issues affecting them, such as the environment. Children worldwide are

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<sup>44</sup> CRC, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Brazil* (30 October 2015) UN Doc CRC/C/BRA/CO/2-4 <<https://undocs.org/CRC/C/BRA/CO/2-4>>.

<sup>45</sup> UNHRC, *Indigenous peoples and coronavirus disease (COVID-19) recovery Report of the Special Rapporteur on the rights of Indigenous peoples, José Francisco Calí Tzay* (6 August 2021) UN Doc A/HRC/48/54 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/217/10/PDF/G2121710.pdf?OpenElement>>.

<sup>46</sup> *Ibid.*, Paras 34, 35 and 36

<sup>47</sup> *Ibid.*, Para 24

<sup>48</sup> UNHRC, *Report of the Special Rapporteur on the rights of Indigenous peoples* (11 August 2016) UN Doc A/HRC/33/42 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/178/84/PDF/G1617884.pdf?OpenElement>>.

<sup>49</sup> UNHRC, *Report of the Special Rapporteur on the rights of Indigenous peoples* (1 November 2017) UN Doc A/HRC/36/46 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/330/97/PDF/G1733097.pdf?OpenElement>>.

<sup>50</sup> UNHRC, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya* (23 December 2013) UN Doc A/HRC/25/55, para 92 <<https://undocs.org/A/HRC/25/55>>.





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currently standing up for environmental rights and exercising their right to be heard (UNCRC art. 12, see below). As the Special Rapporteur on the situation of human rights defenders noted, children and youth play a crucial role in developing new human rights ideas and principles and advocating for their respect and acceptance without discrimination.<sup>51</sup>

Despite their crucial role, like other marginalised groups, children face significant barriers and obstacles in their efforts to defend the environment. Increasingly, States are adopting attitudes and practices aimed at limiting rights to protest with the effect that children's rights to participation and to express their views and opinions freely are constrained and threatened.<sup>52</sup> Children not only face laws prohibiting them from participating in public assemblies but also see their work undermined through increasing governmental control and restrictions on the internet, social media and other communication tools, extensively used by youth defenders.<sup>53</sup> Moreover, human rights defenders and environmental human rights defenders, including children and youth, face extraordinary risks to lives and livelihoods due to their activism. Children as environmental human rights defenders "have reported fearing harassment and other more serious mistreatment if they speak up."<sup>54</sup> Some have faced personal attacks and have received death threats.<sup>55</sup>

In different parts of the world, children and youth defenders – especially students and activists working on human rights and linked issues – already face severe human rights violations due to their work.<sup>56</sup> These violations often seem to be connected to their organisation of and participation in peaceful demonstrations, public forums and speeches or the publication of articles, press statements or blog entries.<sup>57</sup>

Yet, children have the right to participate and express their views and opinions freely in all matters affecting them, including environmental issues (UNCRC, art. 12). They also have the right to freedom of expression, including their right to freedom of association and peaceful assembly (articles 13, 15 and 17). On these bases, the CRC has encouraged States parties to "strengthen efforts to promote respect for the views of all children, especially girls, and to facilitate their participation in all matters affecting them ... in all spheres of life" and to "facilitate the exercise by children of their right to freedom of expression, including their rights to freedom of association and peaceful assembly, so that they can freely discuss, participate and express their views and

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<sup>51</sup> Ibid, para 100.

<sup>52</sup> UN General Assembly (GA), *Situation of human rights defenders: Note by the Secretary-General* (23 July 2018) UN Doc A/73/215, para 62 <<https://undocs.org/A/73/215>>.

<sup>53</sup> Report A/HRC/25/55 (n 45), para 92.

<sup>54</sup> Report A/73/215 (n 47), para 35.

<sup>55</sup> Scott Waldman, 'Climate Deniers Launch Personal Attacks on Teen Activist', *E&E News* (9 August 2019) <[www.scientificamerican.com/article/climate-deniers-launch-personal-attacks-on-teen-activist](http://www.scientificamerican.com/article/climate-deniers-launch-personal-attacks-on-teen-activist)> accessed 9 March 2022; Manuel Rueda, 'The child environmentalist receiving death threats in Colombia', *BBC News*, (27 January 2021) <[www.bbc.com/news/world-latin-america-55803205](http://www.bbc.com/news/world-latin-america-55803205)> accessed 9 March 2022.

<sup>56</sup> UNHRC, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya* (21 December 2011) UN Doc A/HRC/19/55, paras 97, 102 <<https://undocs.org/A/HRC/19/55>>. See also paras 93 ff on youth and student defenders.

<sup>57</sup> Ibid, para 112. See also UNGA, *Human rights defenders: Note by the Secretary-General* (13 August 2007) UN Doc A/62/225, paras 69 & 101b <<https://undocs.org/A/62/225>>.





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opinions on all matters affecting them.”<sup>58</sup> More recently, recognising the contribution of human rights defenders, including environmental human rights defenders, the UNHRC has called on States to protect and empower defenders, and in the case of children and youth defenders, facilitate their participation in decision-making and implementation of environmental policies and programmes and provide a safe and empowering context for initiatives organised by children working to defend human rights relating to the environment.<sup>59</sup>

### C. Child migration and displacement

While environmental conditions have always influenced human mobility, environmental degradation and climate change have significant implications regarding migration patterns and displacement of persons.<sup>60</sup> More intense and frequent extreme weather events and slow disasters disrupt services, damage infrastructures, create water and food stress and destroy livelihoods and habitability, driving an increased displacement and migration.<sup>61</sup> In addition, natural disasters and slow-onset environmental degradation further contribute to the displacement and migration of children. In 2020, an estimated 9.8 million children were internally displaced by weather-related threats.<sup>62</sup>

Children who migrate or are forcibly displaced due to sudden or slow-onset disasters are exposed to several physical and mental risks.<sup>63</sup> They may be separated from their families and communities, lose a parent, their home, and access essential services such as education, health care, and child protection.<sup>64</sup> Moreover, family separation makes them more likely to drop out of school and work to support themselves or their families, increasing their vulnerability to sale, trafficking, and all forms of exploitation and, in some contexts, child recruitment and use in armed conflict.<sup>65</sup> Children, especially those most vulnerable, such as the ones unaccompanied, displaced

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<sup>58</sup> CRC, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Belize* (31 March 2005) UN Doc CRC/C/15/Add.252, paras 31 and 39 <<https://undocs.org/CRC/C/15/Add.252>>; CRC, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding observations of the Committee on the Rights of the Child: Belarus* (13 June 2002) UN Doc CRC/C/15/Add.180, paras 32 and 34 <<https://undocs.org/CRC/C/15/Add.180>>.

<sup>59</sup> UNHRC, *Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development* (20 March 2019) UN Doc A/HRC/40/L.22/Rev.1 <<https://undocs.org/A/HRC/40/L.22/Rev.1>>.

<sup>60</sup> UNHRC, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights* (15 January 2009) UN Doc A/HRC/10/61, paras 55-60 <<https://undocs.org/A/HRC/10/61>>.

<sup>61</sup> UNGA, *Human rights of migrants: Note by the Secretary-General* (13 August 2012) UN Doc A/67/299, para 20 <<https://undocs.org/A/67/299>>.

<sup>62</sup> Save the Children, ‘Walking into the Eye of the Storm’ (n 12) 45.

<sup>63</sup> Ibid. 10.

<sup>64</sup> UNICEF (2012), *Child protection in emergencies*, p. 3, available at: <https://www.unicef.org/pacificislands/media/961/file/Child-protection-toolkit.pdf>

<sup>65</sup> UNGA, *Human rights of internally displaced persons: Note by the Secretary-General* (21 July 2020) UN Doc A/75/207, para 31 <<https://undocs.org/A/75/207>>; UNHRC, *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography*, Najat Maalla M’jid (21 December 2011) UN Doc A/HRC/19/63, para 19 <<https://undocs.org/A/HRC/19/63>> (Report A/HRC/19/63); Save the Children, *ibid.*; UNICEF (2012), *ibid.*



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or separated from their family, are, therefore “exposed to multifaceted vulnerabilities and [are] put at a higher risk of being trafficked, sold and sexually exploited, coerced into child or forced marriages, and used in the worst forms of child labour.”<sup>66</sup> In his report, the Special Rapporteur on the human rights of migrants, focused on the protection of children in the context of migration and the obligation of the State to ensure the protection of all children in all stages of the migration process.<sup>67</sup> However, despite enjoying all human rights, including those guaranteed to migrants, refugees and asylum seekers, Indigenous migrants are more likely to be affected by low levels of rights to literacy. This can lead to low levels of awareness of their rights as migrants and Indigenous peoples, which exacerbates vulnerabilities and increases the likelihood of rights violations.<sup>68</sup> While there have been a number of illustrative good practices,<sup>69</sup> there remain some significant challenges in protecting the human rights of migrants, including the protection of children in the context of migration.<sup>70</sup>

Like women, girls face a higher risk of violence during displacement. They often have more limited livelihood opportunities and access to gender-targeted services and are exposed to an increased risk of harassment, sexual and gender-based violence, forced labour, exploitation, abuse, and trafficking.<sup>71</sup> In some cases, “women and girls unaccompanied by a male family member might face discrimination and barriers to accessing basic services and obtaining civil documentation. In crises, women and girls are more likely to take on house chores and caring duties. Girls might drop out of school, and women and girls might be subjected to child or forced marriage.”<sup>72</sup>

In the light of the climate crisis and given that children are particularly vulnerable to its impacts and consequences, the Special Rapporteur on the human rights of migrants stressed that “States must collectively recognise that migration is part of the solution to global environmental challenges” and that “planned and facilitated migration policies are legitimate coping mechanisms that may ease individuals, groups and communities out of situations of vulnerability.”<sup>73</sup> In

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<sup>66</sup> UNGA, *Sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; and trafficking in persons, especially women and children: Note by the Secretary-General* (18 July 2017) UN Doc A/72/164, para 74 <<https://undocs.org/A/72/164>>.

<sup>67</sup> UNHRC, *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante* (14 May 2009) UN Doc A/HRC/11/7 <<https://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/a.hrc.11.7.pdf>>.

<sup>68</sup> David Passarelli, Cristal Downing, Sophie Buddenhorn and Jennifer Allsopp, ‘Rights Literacy in the Context of Indigenous Migration’ (UNU Centre for Policy Research, 11 October 2021), <<https://cpr.unu.edu/publications/articles/rights-literacy-indigenous-migration.html>>

<sup>69</sup> UNHRC, *Human Rights of Migrants: Note by the Secretary-General* (3 August 2009) UN Doc A/64/213, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/437/77/PDF/N0943777.pdf?OpenElement>>.

<sup>70</sup> *Ibid.*

<sup>71</sup> UNGA, *Human rights of internally displaced persons: Note by the Secretary-General* (21 July 2020) UN Doc A/75/207, para 32 <<https://undocs.org/A/75/207>>; Save the Children, ‘Walking into the Eye of the Storm’ (n 12) 59.

<sup>72</sup> UN Doc A/75/207, *ibid.*, para 32.

<sup>73</sup> UNGA, *Human rights of migrants: Note by the Secretary-General* (13 August 2012) UN Doc A/67/299, para 92 <<https://undocs.org/A/67/299>>. The Special Rapporteur is currently mandated “to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation”. See OHCHR, ‘Call for inputs – Report on the impact of



addition, based on the principle of non-discrimination established in several treaties, including the UNCRC (art. 2), States should respect and ensure the rights of all children, no matter their status of regular or irregular migrants, asylum seekers, refugees, stateless or victims of trafficking, including in situations of return or deportation to their country of origin, irrespective of their or their parents' or legal guardians' nationality, migration status or statelessness.<sup>74</sup> Moreover, the Special Rapporteur on the human rights of internally displaced persons warned that internally displaced persons, communities at risk of displacement and host communities must be involved in decision-making processes for the planning and implementation of prevention and response strategies as well as durable solutions at all stages of development, implementation and monitoring of laws, policies, programmes and strategies, with a special attention to children.<sup>75</sup>

#### **D. Children in natural disasters**

Due to their physical and psycho-social characteristics, children are disproportionately affected by conflicts and natural and humanitarian disasters. In the case of natural disasters and climate-related catastrophes such as droughts, floods, and other extreme weather events, children are not only affected in their daily environment, their family unit, or their access to food or basic services, but their vulnerability to sale, trafficking and sexual exploitation also increases.<sup>76</sup> As the Special Rapporteur on the sale of children, child prostitution and child pornography noted, “[s]ome people exploit the chaotic environment [and the breakdown of governance systems] that follows a natural disaster to engage in criminal activities, such as selling [and trafficking] children for the purposes of illegal adoption [even though their parents are still alive], forced labour or sexual exploitation. The situation enables them to circumvent national and international standards and remove children from their communities or the national territory. Furthermore, the collapse or absence of a State system during and after an emergency often results in a protection vacuum for children who may be separated from their families. Natural disasters destroy or disrupt the normal

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climate change and the protection of the human rights of migrants’ (2022) <<https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/ReportClimateChange.aspx>>.

<sup>74</sup> UNGA, *Report of the Special Rapporteur on the human rights of migrants. The impact of migration on migrant women and girls: a gender perspective* (15 April 2019) UN Doc A/HRC/41/38, para 21 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/107/94/PDF/G1910794.pdf?OpenElement>>.

<sup>75</sup> UNGA, *Human rights of internally displaced persons: Note by the Secretary-General* (21 July 2020) UN Doc A/75/207, para 54 <<https://undocs.org/A/75/207>>.

<sup>76</sup> UNHRC, *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M’jid* (23 December 2013) UN Doc A/HRC/25/48, para 45 <<https://undocs.org/A/HRC/25/48>>; Report A/HRC/19/63 (n 60), para 27. See, also, Katie Harris & Kelly Hawrylyshyn, ‘Project Briefing No. 78, Climate Extremes and Child Rights in South Asia: A Neglected Priority’ (Overseas Development Institute & Plan International, October 2012). <<https://cdn.odi.org/media/documents/7832.pdf>>; Ritu Bharadwaj and others, ‘Climate-induced migration and modern slavery. A toolkit for policy-makers’ (International Institute for Environment and Development, September 2021) <<https://pubs.iied.org/sites/default/files/pdfs/2021-09/20441G.pdf>>.



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conditions of life and the care of children and can, in turn, disrupt, deny and delay the realisation of their rights”.<sup>77</sup>

Faced with the need to survive or generate resources to help alleviate the economic hardship faced by their families or themselves in the aftermath of such disasters, children can be sold or trafficked for the purpose of labour exploitation. Under such pressure, they are more likely to accept false offers of employment or education from traffickers or criminal networks who take advantage of this situation. Then, once in the hands of traffickers, those children are forced into the worst forms of child labour or other forms of exploitation.<sup>78</sup> Moreover, children can be forced into exploitation by those they know, such as community or family members.<sup>79</sup>

Yet, while some countries have established mechanisms to monitor and report violations against children in armed conflicts, no similar mechanisms have been created concerning grave violations in natural disasters. As the full extent of this phenomenon is largely unknown, with no quantitative, qualitative and empirical data, the ability to prevent and combat it is also limited.<sup>80</sup> Consequently, in several instances, States have been called to adopt protection measures during these crises based on the best interest of the child to respect and protect their rights.<sup>81</sup> While it may be observed that international human rights law provides robust protection for migrants who are moving for multiple reasons, which could respond to the needs and rights of environmentally induced migrants, there is nevertheless the need for more concerted and concrete application of those norms to the situation of climate-change-induced migrants.<sup>82</sup> Additionally, there are some deficiencies in the currently existing categories, including definitional complexities around climate change-induced migration, which illustrate the limitations of the current paradigm in which migration is primarily framed within the context of international law.<sup>83</sup>

### E. Girls

As with other marginalised groups, girls experience differentiated impacts from the environmental and climate crises. For example, food insecurity derived from these crises affect gestating people during important stages such as pregnancy, lactation, and childbirth.<sup>84</sup> Likewise, poor air quality affects maternal and child health as it is known to cause intrauterine growth

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<sup>77</sup> Report A/HRC/19/63 (n 60), paras 27-28. See also Report A/72/164 (n 61), para 31; UNHRC, *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography: Note by the Secretariat* (22 December 2016) UN Doc A/HRC/34/55, para 56 <<https://undocs.org/A/HRC/34/55>> (Report A/HRC/34/55).

<sup>78</sup> Report A/72/164 (n 61), para 29.

<sup>79</sup> Report A/HRC/19/63 (n 60), para 29.

<sup>80</sup> Report A/HRC/19/63 (n 60), para 30.

<sup>81</sup> Report A/HRC/19/63 (n 60), 91 ff. See also, Report A/72/164 (n 61), paras 81 (a), 85 (a); Report A/HRC/34/55 (n 63), para 95 (I).

<sup>82</sup> UNHRC, *Human Rights of Migrants: Note by the Secretary-General* (13 August 2012) UN Doc A/HRC/67/299, paras 54 - 58 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/460/71/PDF/N1246071.pdf?OpenElement>> (Report A/HRC/67/299).

<sup>83</sup> *Ibid.*, Paras 59 - 65.

<sup>84</sup> UNHRC, *Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women: Report of the Office of the United Nations High Commissioner for Human Rights* (1 May 2019) UN Doc A/HRC/41/26, para 7 <<https://undocs.org/A/HRC/41/26>> (Report A/HRC/41/26).



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restriction and congenital defects.<sup>85</sup> Moreover, economic hardship from environmental degradation and climate change may increase child, early and forced marriages as a harmful coping strategy.<sup>86</sup>

The Committee on the Elimination of Discrimination against Women (CEDAW)'s General Recommendation 37 recognised that while climate change affects everyone, young people and future generations are disproportionately impacted.<sup>87</sup> Girls and boys are both part of this marginalised group, with many girls experiencing more significant risks, burdens, and impacts. The recommendation underscores the intersecting forms of discrimination that women and girls experience, including “women living in poverty, Indigenous women, women belonging to ethnic, racial, religious and sexual minorities, women with disabilities, women refugees and asylum seekers, internally displaced, stateless and migrant women, rural women, single women, adolescents and older women.”<sup>88</sup> CEDAW stated that categorising women and girls as passive vulnerable groups in need of protection fails to recognise their contributions to disaster risk reduction, post-disaster management, and climate change mitigation and adaptation strategies.<sup>89</sup>

On this matter, the CEDAW confirmed the significant risks climate change poses to the enjoyment of human rights, including those protected by the Convention on the Elimination of all Forms of Discrimination Against Women.<sup>90</sup> The statement mentions that climate change particularly threatens the rights to life, adequate food, adequate housing, health, water and cultural rights. This statement highlights that those already marginalised in pre-existing situations worsen these risks due to discrimination and inequalities. Women and children, along with other marginalised groups, have limited access to decision-making and resources, which is heightened on children due to the immaturity of their body systems. The CEDAW emphasised the need to recognise women and children as agents of change and essential partners to tackle climate change, moving away from considering them only as victims or in terms of vulnerability. In particular, States should consider the best interests of the child when reducing emissions and adapting to climate impacts.

Finally, international cooperation is vital. States must do so in good faith and pay particular attention to those at particular risk of climate harm, namely children, women, persons with disabilities, and Indigenous peoples. For example, the HRW's analytical study on gender-responsive climate action for the full and effective enjoyment of women's rights recommended the

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<sup>85</sup> Ibid, para 14.

<sup>86</sup> Ibid, paras 16, 24.

<sup>87</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change* (13 March 2018) UN Doc CEDAW/C/GC/37, paras 1, 19 <<https://undocs.org/CEDAW/C/GC/37>>.

<sup>88</sup> Ibid, para 2.

<sup>89</sup> Ibid, para 7.

<sup>90</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child, and Committee on the Rights of Persons with Disabilities, ‘Joint Statement on “Human Rights and Climate Change”’ (16 September 2019).

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>





development of gender-specific indicators and mapping the effects of climate change upon the poor, women and girls.<sup>91</sup>

As part of its mandate, the Special Rapporteur on violence against women issued a call for inputs to inform its report on violence against women and girls in the context of the climate crisis, including environmental degradation and related disaster risk mitigation and response.<sup>92</sup> This call is supported on the understanding of the differentiated impacts of the climate crisis and environmental degradation on specific groups of women and girls, including girls with disabilities, migrant or displaced women and girls, Indigenous women and girls, rural women and girls, women and girls living in extreme poverty, women and girls human rights defenders, among others. In addition, the Special Rapporteur underscored the different manifestations of specific types of gender-based violence against women and girls that are exclusively related to the climate crisis, environmental degradation, and related displacement. Furthermore, the Special Rapporteur inquires about the extent to which women and girls can access information and participate fully, equally, and meaningfully in mitigating the climate crisis, including environmental degradation. The deadline to submit inputs is March 31, 2022.

The Special Rapporteur on cultural rights highlights that climate change magnifies existing gender inequalities between girls and boys and raises cultural rights-related obstacles for girls, including increased difficulties accessing education.<sup>93</sup>

## **F. Children with disabilities**

There is a profound intersection between pollution and disability.<sup>94</sup> Exposure to toxic substances and other pollutants affects the most vulnerable groups, especially children. Children born with pollution in their bodies lead to several disabilities that develop throughout their lives.<sup>95</sup> Scientific studies said there is a “silent pandemic” of disabilities and diseases associated with exposure to toxic substances during the children’s first years of life.<sup>96</sup>

Exposure to lead produces decreased intelligence and contributes to behavioural disturbances. Lead is also linked to the development of type 2 diabetes in children. In addition to

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<sup>91</sup> Report A/HRC/41/26 (n 68), para 61.

<sup>92</sup> OHCHR, ‘Call for inputs – Report on violence against women and girls in the context of the climate crisis, including environmental degradation and related disaster risk mitigation and response’ (2021) <[www.ohchr.org/EN/Issues/Women/SRWomen/Pages/climatecrisis.aspx](http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/climatecrisis.aspx)> (OHCHR, ‘Call for inputs’).

<sup>93</sup> UNGA, *Report of the Special Rapporteur in the field of cultural rights, Karima Bennouna, addresses the cultural and cultural rights dimensions of the current climate emergency* (10 August 2020) UN Doc A/75/298 <<https://www.undocs.org/A/75/298>> (Report A/75/298).

<sup>94</sup> Catherine Jampel, ‘Intersections of Disability Justice, Racial Justice and Environmental Justice’ (2018) 4 *Environmental Sociology* 122.

<sup>95</sup> Report A/HRC/33/41 (n 42).

<sup>96</sup> *Ibid.*



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lead, many neurotoxins are also believed to undermine intellectual intelligence and contribute to developmental disabilities and behavioural conditions.<sup>97</sup>

Yet, children with disabilities are left without access to effective remedies or justice for damages caused by pollution. This neglect occurs, among other causes, because disability is developed in posterior stages of their life, and legal barriers prevent them from bringing judicial actions.<sup>98</sup> An additional barrier to justice is the absence of enforcement measures to ensure compliance with the rulings.<sup>99</sup> Another obstacle is the research gap on the impacts that environmental pollution and climate change have on people with disabilities.<sup>100</sup> Therefore, policy and laws must be adopted with an intersectional focus.<sup>101</sup>

States must guarantee workplaces free of pollution, especially for women and girls of reproductive age. This is especially important because exposure to toxic chemical substances may affect the child's development, leading to the birth or later development of a disability.<sup>102</sup> The Rapporteur on the rights of persons with disabilities stated, referring to the impact on girls and women with disabilities when affected by the climate crisis and environmental damage: "In addition, in emergency contexts, girls and women with disabilities face increased risk of gender-based violence."<sup>103</sup>

Children with disabilities suffer various forms of discrimination that hinder them from realising their full potential in the human sphere and the technological environment. Beside the threats of health challenges occasioned by environmental pollution, children with disabilities are constrained by limited access to affordable assistive technological resources at home, in schools, and in the communities.<sup>104</sup> Moreover, some of the peculiar disabilities encompass physical, intellectual, psychological, auditory and visual disabilities, which prevent them from taking advantage of the opportunities available in the technological and human environments of the twenty-first century.

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<sup>97</sup> WHO, 'Lead poisoning and health, Fact sheet N°379' (October 2014) <[www.who.int/mediacentre/factsheets/fs379/en/](http://www.who.int/mediacentre/factsheets/fs379/en/)>.

<sup>98</sup> OHCHR, 'Chile: Nearly 40 years on, still no remedy for victims of Swedish toxic waste – UN experts' (7 June 2021)

<[www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27147&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27147&LangID=E)> accessed 9 March 2022.

<sup>99</sup> Human Rights Watch, 'Children's Right to a Healthy Environment: Submission by Human Rights Watch to the Office of the High Commissioner for Human Rights' (8 October 2019) <[www.hrw.org/news/2019/10/08/childrens-right-healthy-environment](http://www.hrw.org/news/2019/10/08/childrens-right-healthy-environment)> accessed 9 March 2022.

<sup>100</sup> Erin Vallely, 'Grasping at Straws: The Ableism of the Straw Ban' (Centre for Disability Rights)

<<https://cdmns.org/blog/disability-dialogue/grasping-at-straws-the-ableism-of-the-straw-ban/#:~:text=The%20focus%20must%20shift%20from,ways%20of%20improving%20the%20environment.>> accessed 9 March 2022.

<sup>101</sup> Marie Tidball, 'Oxford Disability Law and Policy Project publishes its Up to the Challenge report examining the National Disability Strategy' (University of Oxford Faculty of Law, 3 February 2022) <[www.law.ox.ac.uk/news/2022-02-03-oxford-disability-law-and-policy-project-publishes-its-challenge-report-examining](http://www.law.ox.ac.uk/news/2022-02-03-oxford-disability-law-and-policy-project-publishes-its-challenge-report-examining)>.

<sup>102</sup> Report A/HRC/33/41 (n 42).

<sup>103</sup> 'OHCHR | The Impact of Climate Change on the Rights of Persons with Disabilities'

<<https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/PersonsWithDisabilities.aspx>> accessed 9 March 2022. Statements by panellists. [Ms. Catalina Devandas Aguilar, Special Rapporteur on the rights of persons with disabilities](#)

<sup>104</sup> CRC, *General comment No. 25 (2021) on children's rights in relation to the digital environment* (2 March 2021) UN Doc CRC/C/GC/25, para 90 <<https://undocs.org/CRC/C/GC/25>>.





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With profound opportunities available in the digital environment, States should engage with public institutions and private organisations, especially those in the technology sector, to expand their innovative prowess to churn out ‘disability-friendly’ gadgets which allow children to broaden their social relationships with peers as well as participate in public decision-making discourses that affect them.<sup>105</sup> To implement and achieve these, State Parties need to “encourage and promote universal accessibility to technology so that they can be used by all children with disabilities without being overprotected or excluded.”<sup>106</sup>

Additionally, children with disabilities are prone to threats, such as cyber aggression, sexual exploitation, bullying and abuse in the digital environment. Thus, governments are duty-bound to find solutions to stem those threats; while adopting measures to ensure that the digital environment is safe for them and free from any discriminatory tendencies that might undermine the welfare and development of children with disabilities.<sup>107</sup>

Children with disabilities are even more vulnerable when they belong to minority groups, such as refugees, asylum seekers and victims of abuse. It is thus crucially important for States to ensure that the best interest of children with disabilities is secured as a prerequisite for further realising all other human rights stipulated for them under the UNCRC.<sup>108</sup>

Children with disabilities are mainly cared for and nurtured in the family sphere. This responsibility demands that families are sufficiently supported and provided with the needed resources and provisions to enable them to care for those children humanely. The support required by families in this respect includes: “education of parents/siblings not only in the disability and its causes but also on each child’s unique physical and mental requirements; psychological support that is sensitive to the stress and difficulties imposed on families of children with disabilities; education on the family’s common language, for example sign language, so that parents and siblings can communicate with family members with disabilities.”<sup>109</sup> In addition, the unique nature of children with disabilities calls for proactive commitment and attention from governments, parents and the wider community to protect them.

### G. Children in poverty

In its report on the energy transition process, the Special Rapporteur on extreme poverty points out that efforts to move towards sustainable energy should coalesce with efforts to ensure universal access to affordable, reliable, and modern energy services. Many households still do not have access to affordable modern energy services, especially in rural communities. Several people

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<sup>105</sup> Ibid, para 89.

<sup>106</sup> Ibid, para 89.

<sup>107</sup> Ibid, para 92.

<sup>108</sup> CRC, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)* (29 May 2013) UN Doc CRC/C/GC/14, paras 75, 76 <<https://undocs.org/CRC/C/GC/14>>.

<sup>109</sup> CRC, *General Comment No.9 (2006): The Rights of Children with Disabilities*, UN Doc CRC/C/GC/9, para 41 <<https://undocs.org/CRC/C/GC/9>>.



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still lack access to clean cooking solutions and are exposed to dangerous levels of air pollution, causing millions of deaths each year, primarily among women and children.<sup>110</sup> The Special Rapporteur considered that poverty and ill-health are interrelated. Disadvantaged groups suffer from environmental injustice as they are exposed to environmental hazards, extreme temperatures, and financial barriers to accessing health care. Children experiencing poverty are at a higher risk of later developing hypertension or chronic inflammation. Moreover, poverty affects both the long-term health prospects of individuals and their economic prospects because of its impacts on the child's development.<sup>111</sup> Children from socioeconomically disadvantaged households are generally more likely to grow up in overcrowded, poorly insulated housing exposed to polluted and unsafe environments.<sup>112</sup>

Children are often subjected to poverty and exploitation due to several factors, spanning technology, economic and social. These challenges, if not remedied, will potentially consign them to endemic poverty for years. Whilst the technological divide has provided opportunities for children in some developed countries, “children in rural communities of developing States, especially Indigenous or ethnic minorities, are being left behind in their educational pursuits as a result of poor and non-existing connectivity. This is unsurprising given that average government expenditure in education (as a percentage of GDP) has yet to return to pre-2011 numbers.”<sup>113</sup> Although the Special Rapporteur had noted the sacrificial role played by some teachers in photocopying learning materials to help children achieve their educational development on a daily basis, States should be reminded of their primary responsibility under the Convention on the Rights of the Child, to provide needed educational resources, including literacy.<sup>114</sup> Providing digital educational resources will encourage children to learn new skills and prepare them for the new socio-economic opportunities that come from digitalisation, thereby saving them from systemic poverty.

Due to economic inequalities between the developed and developing States, children continue to experience poverty because of crude and unsophisticated means of production. For example, the mechanisation of production, the development of global supply chains and economies of scale “have increased both produced and traded agricultural commodities and the supply of processed foods, enabling the wealthiest parts of populations in the world to have access to more

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<sup>110</sup> UNGA, *Interim report of the Special rapporteur on extreme poverty and human rights, Olivier De Schutter: The “just transition” in the economic recovery: eradicating poverty within planetary boundaries* (7 October 2020) UN Doc A/75/181/Rev.1 <<https://www.undocs.org/en/A/75/181/REV.1>>.

<sup>111</sup> UNGA, *Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter. The persistence of poverty: how real equality can break the vicious cycles* (19 July 2021) UN Doc A/76/177 <<https://undocs.org/A/76/177>>.

<sup>112</sup> Ibid.

<sup>113</sup> The World Bank ‘Government expenditure on education, total (% of GDP)’ (based on UNESCO Institute for Statistics data as of September 2021) <<https://data.worldbank.org/indicator/SE.XPD.TOTL.GD.ZS>> accessed 8 March 2022.

<sup>114</sup> UNCRC (n 39), arts. 12, 13, 15, 17; UNGA, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* (10 August 2011) UN Doc A/66/290, para 61 <<https://undocs.org/A/66/290>>.



diversified diets; while at the same time, leaving people in developing countries in severe poverty with children bearing the harshest brunt of it.”<sup>115</sup>

There is also an argument that children in poverty are increasing because of the absence of social support systems in developing States, which have been exacerbated by privatisation, service outsourcing and insurance marketisation.<sup>116</sup> These strategies, which gained momentum in the early 1970s across western States, were forcibly imposed on many developing countries, thus deepening the already weakened socio-economic plight of the rural communities with children being steeped in abject poverty. Whereas scores of public social schemes were being privatised in western States, there is barely any comprehensive or organised publicly-funded social project to protect the poor in times of crisis, especially children.<sup>117</sup> This suggests that while environmental factors contribute to poverty among children, socio-economic factors, particularly privatisation policies are largely responsible too.

People living near heavily polluted areas are usually working-class communities and communities of colour. Evidence establishes a correlation between inequitable air pollution exposure and human health, especially children's health.<sup>118</sup> Therefore, even in richer countries, living in poverty increases risk of mortality due to reduced lung capacity.<sup>119</sup> These communities, especially children, suffer from exposure to environmental hazards but are also denied environmental benefits such as access to water, sewage treatment facilities, sanitation, natural resources, green spaces, as well as affordable and healthy food.<sup>120</sup> As a consequence of environmental injustice, these targeted communities face worse health and lower life expectancy.<sup>121</sup> The exacerbation of pre-existing health issues due to environmental injustice thus highlights the absolute necessity to recognise children's right to a healthy environment.

## **H. Hazardous waste & substances and Rights of Children**

Children are uniquely vulnerable to toxic and otherwise hazardous substances and wastes due to their unique metabolism, their less developed physiology and immune systems, and their developmental needs. The exposure to contaminated drinking water and food is exacerbated for communities of colour and working-class people. Childhood exposure is a systemic problem around the world. However, children are left without access to effective remedies for the harms of toxins and pollution despite the fact that these remedies already exist. The Special Rapporteur

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<sup>115</sup> Barry M Popkin, Camila Corvalan and Laurence M Grummer-Strawn, 'Dynamics of the double burden of malnutrition and the changing nutrition reality' (2020) 395:10217 *The Lancet* <[www.thelancet.com/journals/lancet/article/PIIS0140-67361932497-3/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-67361932497-3/fulltext)>.

<sup>116</sup> Shiri Noy, 'Banking on Health: The World Bank and Health Sector Reform in Latin America' (Springer Nature 2017) 18-19.

<sup>117</sup> See Mimi Abramovitz and Jennifer Zelnick, 'Privatisation in the Human Services: Implications for Direct Practice' (2015) 43 *Clinical Social Work Journal* 283.

<sup>118</sup> S. Banzhaf, L. Ma, C. Timmins, *Environmental Justice : the Economics of Race, Place, and Pollution*, *Journal of Economic Perspective*, Volume 33, Number 1, Winter 2019, at p. 193, available at <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.33.1.185> .

<sup>119</sup> *Ibid.* Sacoby Wilson's interview.

<sup>120</sup> *Ibid.* Steger, T., *Making the Case for Environmental Justice in Central and Eastern Europe*.

<sup>121</sup> S. Nazrul Islam, *Inequality and Environmental Sustainability* , DESA Working Paper No. 145, August 2015



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denounced that children continue to be born “pre-polluted” and denied their right to bodily integrity, among others, before they can walk.<sup>122</sup> Studies have shown the presence of hundreds of different toxic substances in young and unborn children. Because of widespread childhood exposure, the world is witnessing a “silent pandemic” of disease, disability, and premature death.<sup>123</sup>

Children are also exposed to endocrine-disrupting chemicals. Instead of guaranteeing their right to food and nutrition without toxic or hazardous substances, children are “turned into adults” before they should because of hormones in food.<sup>124</sup> While research may still be novel, and more evidence is needed to provide conclusive links, some substances that are already known to be harmful in food continue to be used on the false premise that they are within legal limits, despite the human rights abuses and violations. Even if such exposure may be permitted, this does not eliminate the adverse health and developmental effects on children.

Everyone has a right to know whether they are or may be exposed to hazardous substances, including children. Most of the time, children do have no knowledge or information about this right. This is especially true in the cases of child labour which, despite many protections, remains a practice in many developing States. These include the health consequences of accidents at work and associated health risks. Almost two thirds of human rights harms within the workplace can be attributed to health and safety concerns.<sup>125</sup> To realise this right, information must be accessible and non-discriminatory.

In most cases, these child workers lack accessible information on health and safety issues, for example, when that information was not made available in their language or clearly labelled pictures were not provided. According to a 2018 report of the Business & Human Rights Resource Centre,<sup>126</sup> companies should use their leverage to support and require suppliers and distributors to adhere to human rights and labour standards and clearly communicate these expectations. There is also a need for more rigorous supply chain monitoring and human rights due diligence by companies in this regard.

Children from low-income communities are disproportionately affected by the chemical industry and toxic waste, mainly owing to improper management and disposal of hazardous

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<sup>122</sup> UNGA, *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes* (2 August 2016) UN Doc A/HRC/33/41/E, para 5 <<http://www.undocs.org/A/HRC/33/41>> (Report A/HRC/33/41/E).

<sup>123</sup> UN General Assembly (GA), *Implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes* (05 August 2020) UN Doc A/75/290, para 40 <<https://undocs.org/en/A/75/290>> (Report A/75/290).

<sup>124</sup> *Ibid.*, para 47.

<sup>125</sup> UN Human Rights Special Procedures, Business & Human Rights Resource Centre, *‘Business & human rights in the chemical industry: An assessment of company responses to human rights issues, Potentials for progressive corporate practice & governmental frameworks’* (2018) <<https://www.business-humanrights.org/sites/default/files/BHRRC%20Chemical%20Briefing%2030%20Jan%202018.pdf>>.

<sup>126</sup> *Ibid.*



substances, toxic contamination, and pollution.<sup>127</sup> These activities violate the right to a clean environment, health, food and access to water, and the right to information regarding contamination levels and adverse impacts on human health, including children’s health. Chemicals and toxic waste are mainly regulated at national and supranational levels depending on the region. Governments have a critical role in protecting these rights by providing adequate regulation of companies in the industry and monitoring their compliance with those regulations. The Special Rapporteur recommends that businesses respect the right of every child to be born free from pollution and other toxic chemicals. The report further suggests that the States strengthen the rule of law for environmental and occupational rights nationally and extraterritorially, including by recognising their duty to prevent exposure and ensuring that victims, including children, have access to an effective remedy when exposed to hazardous substances.<sup>128</sup> States need to ensure that the exploitation of vulnerable groups such as children in poorer countries and low-income communities comes to rest and special measures are taken to protect children from hazardous and toxic substances.

#### **4. What are the impacts of environmental harm on future generations?**

Future generations are central to sustainable development and, as such, are subjects of many environmental treaties, including the Convention on Biological Diversity, and (regional) human rights treaties, most notably the Aarhus Convention and Escazú Agreement.<sup>129</sup> Recognition of future generations as rights holders counteracts neoliberal and capitalist tendencies in policymaking by applying a cost-benefit analysis and shifting the focus to not only future human beings but also the earth systems they will inherit.<sup>130</sup> Furthermore, as underlined by the Supreme Court of Colombia, environmental rights should include future generations, based on the specie’s ethical duty of solidarity since “natural resources are shared by all inhabitants of Planet Earth, and by their descendants or future generations who do not yet have a physical hold of them, but who are recipients and owners of them, even if such resources, in a contradictory way, are increasingly insufficient and limited.”<sup>131</sup> Guaranteeing the rights of future generations is thus paramount to

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<sup>127</sup> See, for instance, William Wroblewski, “‘Babies here are born sick’: are Bolivia’s gold mines poisoning its Indigenous people?” *The Guardian* (12 January 2022) <<https://www.theguardian.com/global-development/2022/jan/12/babies-here-are-born-sick-are-bolivia-gold-mines-poisoning-its-indigenous-people>>

<sup>128</sup> Report A/75/290E (n 104 ), para 95

<sup>129</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (adopted 25 June 1998, entered into force 10 October 2001), UNTS vol. 2161, p. 447; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) (adopted 4 March 2018, entered into force 22 April 2021); The Convention on Biological Diversity (adopted 5 June 1992 entered into force 29 December 1993), UNTS vol. 1760, p.69.

<sup>130</sup> See for a similar argument Sam Adelman, ‘The Sustainable Development Goals, Anthropocentrism and Neoliberalism’ in Duncan French and Louis J Kotzé (eds), *Sustainable Development Goals: Law, Theory and Implementation* (Edward Elgar Publishing 2018) 39.

<sup>131</sup> Corte Suprema de Justicia (Colombia) 5 april 2018, STC4360-2018 (Dejusticia), p. 20.





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address the complex temporal and spatial scope and root causes of environmental crises and, as a result, an integral part of a children's right to a healthy environment.

Not only should a child's right to a healthy environment include rights of future generations, it is particularly well-placed to include these interests given the close relationship of children to future generations.<sup>132</sup> The Special Rapporteur emphasises this view on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment when pointing out "the line between future generations and today's children shifts every time another baby arrives and inherits their full entitlement of human rights. It is critical, therefore, that discussions of future generations take into account the rights of the children who are constantly arriving, or have already arrived, on this planet."<sup>133</sup> Several environmental and climate litigation cases similarly underline the unique position of children to argue on behalf of future generations. For example, in *Oposa vs Factoran*, the Supreme Court of the Philippines held that the children who brought the case could legitimately do so "based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned."<sup>134</sup> In *Future Generations vs Ministry of Environmental and Others*, the Colombian Supreme Court held that based on the principle of intergenerational equity, children could bring a climate litigation claim related on behalf of future generations, since both were directly affected by the current climate science prospects of temperature rise.<sup>135</sup> Furthermore, an obligation to future generations can be owed without an explicitly recognised right. Members of present generations, such as children, who share interests with those not yet born and consider themselves to be part of the same group, have brought suits on their own behalf for the harm they will suffer in the future, claiming that intergenerational equity applies to them as well as to future generations.<sup>136</sup> The latest report of the IPCC supports such a stance by reiterating that today's children and the unborn will be exposed to more significant risks than most living adults.<sup>137</sup>

Therefore, a child's right to a healthy environment should account for future generations. As stated by the UN Special Rapporteur on toxic and hazardous wastes, "States should be in a position to explain and be held accountable for how they respected the right of present and future children to have their best interests considered in decision-making, including how this right has

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<sup>132</sup> Not only do children have such a relationship, but Indigenous peoples hold a close relationship with future generations and are therefore also well-placed to advocate for rights of future generations. See for example Dorine E van Norren, 'The Sustainable Development Goals Viewed through Gross National Happiness, Ubuntu, and Buen Vivir' (2020) 20 *International Environmental Agreements: Politics, Law and Economics* 431; Clinton L Beckford and others, 'Aboriginal Environmental Wisdom, Stewardship, and Sustainability: Lessons from the Walpole Island First Nations, Ontario, Canada' (2010) 41 *The Journal of environmental education* 239.

<sup>133</sup> UNHRC, *Children's Rights and the Environment: Report of the Special Rapporteur on Human Rights and the Environment* (24 January 2018) UN Doc A/HRC/37/58, para 68.

<sup>134</sup> *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources*, 33 ILM 173 (1994).

<sup>135</sup> Corte Suprema de Justicia (Colombia) 5 april 2018, STC4360-2018 (Dejusticia), para 11.2.

<sup>136</sup> Lydia Slobodian, 'Defending the Future: Intergenerational Equity in Climate Litigation' (2020) 32 *Georgetown Environmental Law Review* 32 569, 576.

<sup>137</sup> IPCC, 'Climate Change 2022' (n 7).



been weighed against other considerations.”<sup>138</sup> Children must therefore be regarded as both full participants in any processes around tackling environmental crises and representatives of future generations as an indispensable part of a children’s right to a healthy environment.<sup>139</sup>

The above section attempts a weighty task: parsing out and naming environmental and climate harms experienced by children with various (and often multiple intersecting forms) of marginalisation worldwide (as identified by the CRC Committee on the Rights of the Child and several UN Special Mandate Holders.)<sup>140</sup>

The harm experienced by children experiencing intersecting discriminations is as large-scale as it is difficult to measure and quantify. Land grabs, infrastructure and extractive industry practices contaminate air, soil and water, and forcibly evict Indigenous communities, severing their ties to the land and environment and interfering with their right to food, water, education, and healthcare. Internally displaced children face similar threats. Land-based ties to identity, culture, and community are severed.

In most situations, girls (and women in general) in any of these marginalised positions<sup>141</sup> experience differentiated and increased impacts. Adults who experience poverty as children are at higher risk for serious health issues, and the safety and health of child human rights defenders are constantly at risk. Children are disproportionately affected by all of the above given their developing physiology and psychology. Due to the problem’s sheer scope, size, and populations it affects, data is difficult to collect and standardise.

This is simply a starting point; as discussed above, there are myriad harms affecting children either directly or proximately caused by the environmental and climate crisis. Recognising this right would move towards goals such as the meaningful participation of children who are members of these groups in environmental decision- and policymaking and moving the categorisation of women and children as vulnerable and in need of State protection to these groups as change agents. The following section will discuss what States are obligated to do to mitigate these harms.

## **5. What are the State’s obligations related to children’s right to a healthy environment?**

Given the myriad, overlapping harms experienced by children as a result of environmental and climate instability and destruction, States become a crucial actor in addressing this harm. Only by guaranteeing these basic, fundamental conditions can a child’s right to a healthy environment

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<sup>138</sup> Report A/HRC/33/41 (n 42), para 19.

<sup>139</sup> Report A/75/298 (n 78), para 9.

<sup>140</sup> As stated *infra*, these forms of marginalization include Indigenous children, children human rights defenders, internally displaced children, children who are ethnic minorities, girls and young women, children with disabilities, children living in conditions of poverty, and children living in areas that experience or are vulnerable to environmental disasters.

<sup>141</sup> As stated *infra*, this includes “women living in poverty, indigenous women, women belonging to ethnic, racial, religious and sexual minorities, women with disabilities, women refugees and asylum seekers, internally displaced, stateless and migrant women, rural women, single women, adolescents and older women.”





be realised. Accordingly, States must ensure these conditions are met by issuing the corresponding laws or enacting policies that aim to respect and protect children's rights. Implementation of these laws and policies is critical to ensure children are entitled to and fully enjoy the right to a healthy environment.

The following section details key legislative and policy-based steps currently imperative for States to take and provides models of legislative frameworks and measures already taken by States, both in recognising children's right to a healthy environment broadly as well as towards more specifically-directed educational, informational, health, and developmental aims.

Domestic legal frameworks that already recognise children's right to a healthy environment usually include provisions regarding the State's obligations towards its realisation. For example, in Colombia, article 17 of the Code of Childhood and Adolescence acknowledges the importance of a quality life to children's dignity and integral development. The article mentions that this right presupposes the availability of conditions that ensure access to health, education, clothing, recreation, and safe housing in a healthy environment from the moment of conception. To achieve this, the government must enact the necessary public policies to strengthen childhood.

Similarly, article 35 of El Salvador's special law for the protection of the rights of children imposes a duty on the State to issue environmental policies and permanent programs directed to promoting girls, boys and adolescents' protection, conservation and enjoyment of natural resources. Likewise, the State must reduce risks that derive from environmental dangers. Finally, the State is in charge of implementing educational programs on recycling measures and water quality monitoring. Peru's New Code of Children and Adolescents includes a duty of the State to provide basic education that includes education on respecting the natural environment (art. 15 i) Chapter 3 on economic, social and cultural rights), and a particular duty of children and adolescents to protect the environment (art. 24). Lastly, Benin's Children's Code includes among the State's duties to facilitate access to information regarding child's health and nutrition, including environmental health (art. 153). And Vietnam's Children Law explicitly mentions that the State has an obligation to establish a safe and suitable living environment for children (art. 48) and create a healthy environment for the development of the children (art. 99).

#### **A. States' implied obligation to provide to children remedies for harm from environmental violations**

In its 2017 analytical study examining the consequences of climate change on children and the human rights obligations and responsibilities of States and other stakeholders,<sup>142</sup> the UNHCR stated that the human rights obligations and responsibilities contained in the UNCRC, the Paris Agreement and other international human rights instruments require States to protect the rights

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<sup>142</sup> UNHRC, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child* (4 May 2017) UN Doc A/HRC/35/13 <<https://undocs.org/A/HRC/35/13>>.



and best interests of children from the harmful effects of climate change. Moreover, the 2018 report of the Special Rapporteur on human rights and the environment identifies the States' obligations to protect human rights as even direr for the rights of children since they are especially at risk from environmental harm.<sup>143</sup>

### **B. States' obligation to protect the best interests of the child via precautionary regulations**

The report underlines that to satisfy their obligations of special protection and care, States have "heightened obligations to take effective measures to protect children from environmental harm."<sup>144</sup> Indeed, the development and implementation of national environmental policies and standards "must take into consideration the best interests of children."<sup>145</sup> Therefore, it is recommended that States should make sure children's rights and best interests are protected before they make any decisions that could cause environmental harm, and should regulate private actors, including businesses, to prevent them from causing or contributing to abuses of children's rights.<sup>146</sup> Furthermore, it is recommended that States take a precautionary approach to protect children against environmental harm and that "lack of full scientific certainty should never be used to justify postponing effective and proportionate measures to prevent" such harm "especially when there are threats of serious or irreversible damage."<sup>147</sup>

The human rights obligations of governments in relation to the environment apply with particular force to children who are especially at risk from environmental harm and often unable to protect their own rights.<sup>148</sup> Despite the fact that governments' obligations exist in several sources, this argument is premised on the CRC because of its focus on children and its near-universal acceptance by the international community.

### **C. States' obligation to provide access to environmental information & education, and mandate Children's Rights Environmental Impact Assessments**

To stem actions/practices that may interfere with children's ability to enjoy human rights, there is a need for an environmental impact assessment to be conducted prior to the commencement of any developmental projects, in a given community, so as to protect children against hazards

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<sup>143</sup> UNHRC, *Children's Rights and the Environment: Report of the Special Rapporteur on Human Rights and the Environment* (24 January 2018) UN Doc A/HRC/37/58, para 38 <<https://undocs.org/A/HRC/37/58>>..

<sup>144</sup> *Ibid*, para 58.

<sup>145</sup> See e.g. A/HRC/46/28 at para 222; A/HRC/40/55 at para 71; A/73/188 at para 16(d); Report A/HRC/37/59 (n 134) at Framework Principle 14, Commentary 45.

<sup>146</sup> *Ibid*, paras 59-60.

<sup>147</sup> *Ibid*, para 58.

<sup>148</sup> Framework Principles on Human Rights and the Environment presented to the Thirty-seven session of the Council (A/HRC/27/59)



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detrimental to their well-being. The CRC states that the child’s right to freedom of expression “shall entail the freedom to seek, receive and impart information and idea of all kinds, irrespective of barriers, either in writing, orally, in print, in the form of art or through any other media of the child’s choice” (art. 13). Thus, the right is critical to equipping children to appreciate the impact of environmental harm on their lives so as to adopt a remedy.<sup>149</sup> Governments have an obligation to ensure that children gain access to vital environmental information. Access to environmental information falls under two strands: (i) government’s obligation to ensure that environmental information held by public agencies is collected, updated and disseminated in an affordable, timely and accessible fashion to help children make decisions that enhance their health; and (ii) where there is imminent threat/danger of environmental harm, either emanating from natural or human-induced factors, governments must strive to provide accurate information, especially children so that they would adopt protective measures to evade the disaster.<sup>150</sup>

Furthermore, governments owe it to children to ensure that they enjoy their human rights in an environment devoid of poisonous and hazardous substances because the particular vulnerabilities to contract diseases stemming from wastes, pollution and related chemical substances at an early age or prior to birth.<sup>151</sup> Similarly, since children are susceptible to a myriad of environmental harms, governments are required to institute “children-rights impact assessment”, which explores the effects on children of proposed projects with a view to making recommendations to ameliorate any vicious impacts thereof.<sup>152</sup>

Lastly, ecological education is another important tool to increase respect for, understanding, and defense of children’s environmental rights.<sup>153</sup>

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<sup>149</sup> CRC, *General comment No. 12 (2009): The right of the child to be heard* (20 July 2009) UN Doc CRC/C/GC/12, para 2 <<https://undocs.org/CRC/C/GC/12>> (CRC, General Comment No. 12)

<sup>150</sup> UNHRC, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (24 January 2018) UN Doc A/HRC/37/59 <<https://undocs.org/A/HRC/37/59>> (Report A/HRC/37/59).

<sup>151</sup> CRC, General Comment No. 12 (n 133), para 2.

<sup>152</sup> CRC, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1) (29 May 2013) UN Doc CRC/C/GC/14, para 99 <<https://undocs.org/CRC/C/GC/14>>.

<sup>153</sup> See UNHRC, *Good practices of States at the national and regional levels with regard to human rights obligations relating to the environment* UN Doc A/HRC/43/54 <<https://undocs.org/A/HRC/43/54>>, para 16: “It is essential to provide ecological education to children and youth of all ages, from preschool through to college and university. People from all walks of life in all regions also require greater knowledge and understanding of their fundamental human rights and the tools available to defend those rights.” (Report A/HRC/43/54); Report A/HRC/37/59 (n 134) at Framework Principle 6, Commentary 15: “States have agreed that the education of the child shall be directed to, among other things, the development of respect for human rights and the natural environment. Environmental education should begin early and continue throughout the educational process. It should increase students’ understanding of the close relationship between humans and nature, help them to appreciate and enjoy the natural world and strengthen their capacity to respond to environmental challenges. [footnotes omitted]”



#### **D. States' obligation to protect children's freedom of expression and freedom from related reprisals**

Governments' obligations to protect children against risks of violence or other reprisals regarding environmental issues is critical.<sup>154</sup> Like adults, children who express or engage in public protestation on environmental issues face several threats including deaths.<sup>155</sup> According to Special Rapporteur, a 15 year old was sued by a mining company for criminal defamation because she had expressed concern that mining activities polluted her community's water sources.<sup>156</sup> The charges against her were dropped after lengthy litigation. Moreover, the UNCRC has charged governments and their respective agencies to adopt proactive measures aimed at ensuring that children express their views on environmental issues freely without suffering any form of intimidation or harassment.

#### **E. States' obligation to ensure children's health via sustainable development**

States' responsibility to ensure that children develop physiologically in order to participate in the socio-economic fortunes of society is recognised in the World Summit for Children (1990). The Summit stated that: "The child survival and development goals proposed for the 1990s in this Plan of Action seek to improve the environment by combating disease and malnutrition and promoting education. These contribute to lowering death rates as well as birth rates, improved social services, better use of natural resources and, ultimately, to the breaking of the vicious cycle of poverty and environmental degradation."<sup>157</sup> Undoubtedly, the relationship between children's immunity, educational progress and ability to enjoy other social protection is not only hinged on the provision of sound medical facilities, but also a clean and healthy environment. Thus, States have the primary duty of ensuring that the human environment is clean and congenial for children's well-being. Sustainable development is at the core of protecting children's right to a healthy environment. This principle urges States to implement strategic socio-economic policies that pay considerable attention to safeguarding the environment.<sup>158</sup>

Overall, the development and implementation of national environmental policies and standards "must take into consideration the best interests of children."<sup>159</sup> Ecological education is

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<sup>154</sup> Report by special Rapporteur "Environmental Human Rights Defenders: A Global Crisis:" at [www.universalrights.org](http://www.universalrights.org)

<sup>155</sup> See section B.2 above.

<sup>156</sup> (Prachatai, "Mine Operator sues high school students for criminal defamation", 14 December 2015, available at: <https://prachatai.com/engsih/node/5693>.)

<sup>157</sup> Declaration of the World Summit for Children (1990) para.26

<sup>158</sup> Alan, B., 2017. *Human rights and the environment: where next?* (pp. 765-794). Routledge.

<sup>159</sup> See e.g. A/HRC/46/28 at para 222; A/HRC/40/55 at para 71; A/73/188 at para 16(d); Report A/HRC/37/59 (n 134) at Framework Principle 14, Commentary 45.



another important tool to increase respect for, understanding, and defense of children’s environmental rights.<sup>160</sup>

## **6. What is the relationship between the right to a healthy environment and the right of the child to be heard and to have their views considered?**

Article 12 of the UNCRC requires that children are heard, and that their views are given due weight in all matters affecting them. The Special Rapporteur on Human Rights and the Environment has noted the importance of acknowledging and amplifying children’s voices.<sup>161</sup> In 2019, the Special Rapporteur stated that “[t]here is a need to promote the voices of children and youth in environmental matters, as they are particularly vulnerable and their rights are being violated and threatened.”<sup>162</sup> Recommendations for children’s participatory rights have included youth parliaments and lowering the minimum voting age to 16 years or lower “to enable youth to participate in and influence the political system, which is ... integral to shaping the world they will inherit.”<sup>163</sup>

In its 2018 report, the Special Rapporteur on the right to a healthy environment stressed the importance of environmental assessment of any State’s projects and policies to avoid any interference with the full enjoyment of human rights, especially the rights of children through a “child-rights impact assessment” by considering their vulnerability or by providing for their participation.<sup>164</sup>

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<sup>160</sup> See UNHRC, *Good practices of States at the national and regional levels with regard to human rights obligations relating to the environment* UN Doc A/HRC/43/54 <<https://undocs.org/A/HRC/43/54>>, para 16: “It is essential to provide ecological education to children and youth of all ages, from preschool through to college and university. People from all walks of life in all regions also require greater knowledge and understanding of their fundamental human rights and the tools available to defend those rights.” (Report A/HRC/43/54); Report A/HRC/37/59 (n 134) at Framework Principle 6, Commentary 15: “States have agreed that the education of the child shall be directed to, among other things, the development of respect for human rights and the natural environment. Environmental education should begin early and continue throughout the educational process. It should increase students’ understanding of the close relationship between humans and nature, help them to appreciate and enjoy the natural world and strengthen their capacity to respond to environmental challenges. [footnotes omitted]”

<sup>161</sup> See UNGA, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd. Healthy and sustainable food: reducing the environmental impacts of food systems on human rights* (19 July 2021) UN Doc A/76/179, para 59 <<https://undocs.org/A/76/179>>.

<sup>162</sup> Report A/HRC/43/54 (n 142), para 58.

<sup>163</sup> See UN Special Rapporteur on Human Rights and the Environment (SRHRE), *Healthy and Sustainable Food: Good Practices: Supplementary information to the report of the Special Rapporteur, David R. Boyd, on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (13 October 2021) UN Doc Annex to A/76/179, para 142; UNSRHRE, *Human rights depend on a healthy biosphere: good practices. Supplementary information on the report of the Special Rapporteur, David R. Boyd, on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (21 September 2020) UN Doc Annex to A/75/161; UNGA, *A safe climate: good practices. Note by the Secretary-General. Supplementary information on the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (26 September 2019) UN Doc Annex to A/74/161.

<sup>164</sup> UNHRC, *Children’s Rights and the Environment: Report of the Special Rapporteur on Human Rights and the Environment* (24 January 2018) UN Doc A/HRC/37/58, para 46 <<https://undocs.org/A/HRC/37/58>>, citing Report A/HRC/37/59 (n 134), annex, framework principle 8.



Additionally, the report highlighted that the UNCRC provides that the views of children must be given due weight in accordance with age and maturity.<sup>165</sup> The report recalls that the CRC stated that the views of children may add relevant perspectives and experience with respect to environmental harm, especially with respect to long-term environmental challenges that will shape the world in which they will spend their lives.<sup>166</sup> As such, the CRC has illustrated how to implement the participatory rights of children, for example through children’s hearings; children-led organisations, unions or other representative bodies where children would be provided with age-appropriate information and appropriate support.<sup>167</sup> Other ways in which children have a right to be heard is through freedom of assembly and association (see Section B2 above), as well as accessing remedies for environmental harm.

## **7. What Environmental remedies are available for children?**

As mentioned, the report emphasises that while the UNCRC does not provide for remedies to redress violations, this requirement is implicit.<sup>168</sup> Furthermore, the Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2 (3)) and other human rights texts stipulate that States must provide for effective remedies for violations of human rights.<sup>169</sup> The CRC stated that States must ensure that effective and child-sensitive procedures are available to children and their representatives and that appropriate reparation is provided when rights are found to have been violated, including compensation and measures to promote physical and psychological recovery, rehabilitation and reintegration.<sup>170</sup> The report underlines that to satisfy their obligations of special protection and care, States have “heightened obligations to take effective measures to protect children from environmental harm.”<sup>171</sup> Therefore, it is recommended that States should make sure children’s rights and best interests are protected before they make any decisions that could cause environmental harm, and should regulate private actors, including businesses, to prevent them from causing or contributing to abuses of children’s rights.<sup>172</sup>

The Special Rapporteur has recognised that “children may face additional barriers to access to justice” in the context of environmental harm and that States must take steps to remove these barriers.<sup>173</sup> From a procedural standpoint, the Special Rapporteur recommends that the State

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<sup>165</sup> Ibid, para 47, citing article 12 of the UNCRC.

<sup>166</sup> Ibid, citing CRC, General Comment No. 12 (n 133), para 12.

<sup>167</sup> Ibid, para 49, citing CRC, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)* (29 May 2013) UN Doc CRC/C/GC/14, paras 91, 134.

<sup>168</sup> Ibid, para 51.

<sup>169</sup> Ibid, para 51.

<sup>170</sup> Ibid, para 53, citing CRC, *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child* (27 November 2003) UN Doc CRC/GC/2003/5, para 24.

<sup>171</sup> Ibid, para 58.

<sup>172</sup> Ibid, paras 59-60.

<sup>173</sup> Ibid, para 53.





obligation under the CRC to make effective, child-sensitive procedures available to children for obtaining remedies to redress rights' violations include “the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.”<sup>174</sup> He notes that in cases of environmental harms, many of the impacts are irreversible. As a result, “States must do what they can to prevent the harm from occurring in the first place”, which may in certain instances “be possible through injunctive relief ordered by judicial tribunals or administrative bodies.”<sup>175</sup>

The Aarhus Convention of 1998<sup>176</sup> and the Escazú Agreement of 2018<sup>177</sup> both recognise at the regional level the access to information, public participation and access to justice in environmental matters in order to protect the right to a healthy environment of present and future generations. Although these agreements do not include a reference to children, they are guided by the principles of equality and non-discrimination, that acknowledges the group's difficulties in enjoying the rights recognised in the agreement and vows to include those that have traditionally been underrepresented, excluded, or marginalised, like children and future generations.<sup>178</sup> Children's procedural environmental rights, therefore, should be guided by the legal obligations contained in these treaties given the non-discrimination clauses, as well as given their objective to protect a healthy environment for present and future generations. As a result, children's interests should not only be considered in administrative, judicial and policy decisions, but should be at the center of such processes by creating synergies with the obligations set out in these two regional human rights treaties.

## **8. Conclusion & Recommendations**

States have an obligation to respect, protect, and fulfil human rights and to address environmental harm. Because of the undeniable impact of the environmental crisis on the enjoyment and realisation of basic human rights, it is crucial to integrate the human right to a healthy environment into national constitutions and legislation and to recognise it at the global level. As highlighted by the UNHRC resolution, States must realise the rights of children through the recognition of the right to a healthy environment in their national legislation to ensure the rights of both present and future generations.

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<sup>174</sup> Ibid, para 52.

<sup>175</sup> Ibid, para 54.

<sup>176</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (adopted 25 June 1998, entered into force 10 October 2001), UNTS vol. 2161, p. 447.

<sup>177</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) (adopted 4 March 2018, entered into force 22 April 2021).

<sup>178</sup> Ibid.





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What follows is a set of specific recommendations to be adopted, in order of priority, to secure and sustain the child's human right to a healthy environment. It is emphasised that this document, rather than being a final set of outcomes, should be construed as the start of a critical dialogue on the steps that need to be taken by various geopolitical entities to further children's rights in light of the triple planetary crisis, as discussed *infra*.

- Children are exposed to many toxic pollutants, which endanger life and health of children. Companies are one of the primary sources of pollution that can affect children. There must be laws that regulate the polluting activities of companies. Also, companies must have a legal obligation to disclose information about the pollutants they emit. Finally, the legal and constitutional recognition of the right to live in a pollution-free environment is a step forward, as well as the enforcement of measures to ensure compliance with this guarantee.
- Place Children's right at the heart of environmental policies and actions: States should endeavour to legislate in order to enjoin public institutions and private organisations to design policies and action programmes which have children's health and environmental protection as a priority.
- Ban the usage of poisonous and radioactive substances which pose severe health threats to children's health, growth and development: The UN should formally recognise the right to a clean and safe environment in order to set the stage for Member States to adopt domestic measures to secure children's right to a healthy environment; as well as, protecting child environmental human rights defenders to propagate principles and instruments advancing children's right to a clean, safe and healthy environment without suffering harassment or criminal prosecutions.
- States should place special attention to measures directed towards ending child labour and must guarantee workplaces free of pollution, especially for women and girls in reproductive age. This is especially important because the exposure to chemical toxic substances may affect the child's development, leading to the birth or later development of a disability
- Protect the right to be heard and the right to freedom of expression: States should aim to protect the freedom of expression of environmental rights defenders, especially children, by ensuring that children's views, ideas, and concerns relating to clean and safe environment are heard and included in national legislation and policies to prevent pollution.



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- Encourage access to justice, including effective remedies for and reparation of human rights violations due to harm, for example climate change and exposure to toxic substances and pollution, through child-friendly complaint mechanism at all levels, including by ratifying the Optional Protocol to the Convention on the Rights of the Child on a communication procedure.
- Work towards stopping forced evictions, migration, and displacement due to development projects like dams or large-scale extractive industry practices, which can affect children's health systemically and permanently, specifically as they affect Indigenous communities.
- Account for the differentiated impacts of the climate crisis and environmental degradation on specific groups of women and girls, including girls with disabilities, migrant or displaced women and girls, Indigenous women and girls, rural women and girls, women and girls living in extreme poverty, women and girls human rights defenders, among others.
- Work towards ending discrimination against children who are members of marginalised communities experiencing environmental harm, including children with disabilities, children in rural areas, children living in areas of environmental disasters, non-citizen children, and children from poor families.
- Promote children's access to environmental information and education. This should be done both in the face of imminent or potential environmental crises, as well as regularly followed as an obligation to ensure that publicly-held and maintained environmental information is updated and disseminated regularly, affordably, and in a timely fashion.
- Standardise a child-rights impact assessment process, triggered by the initiation of State or private projects or policies. Such assessments should provide for children's participation in the impact assessment and make specific considerations for their vulnerability.
- States should ensure that businesses respect the rights of the child in the environmental context and comply with the General Comment 16 by the UN Committee on the Rights of the Child.
- Ensure procedural equity by recognising and promoting youth as *full* participants in governance rather than bystanders. In comportment with Committee recommendations for the characterisation of women and girls, avoid characterising children as "passive, vulnerable groups in need of protection," but rather as partners and change agents.



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- Increase public participation of children in government by removing procedural barriers to and providing support for representative bodies like youth parliaments or unions, fora for children’s hearings, and youth leadership in governance, and lowering minimum voting ages
- Stem the climate crisis: The climate crisis is a “children’s right crisis.” There is an urgent need for States to infuse the right to a clean environment within climate policies with a view to align it with the intergovernmental Declaration on Children, Youth, and climate action, thereby safeguarding the well-being of children.
- End childhood exposure to pollution and toxic substances: Concrete efforts should be made by governments to address pollution of the environment and exposure to toxic substances and wastes, violating a wide range of children’s rights.
- Ensure a just and green recovery from Covid-19 and take urgent steps to prevent future pandemics: Environmental degradation is considered one of the cardinal factors of the Covid-19 pandemic, thus States have the opportunity to implement transformational recovery plans that protect children’s right and the environment; while, addressing the factors of climate change, biodiversity loss, toxic pollution and zoonotic diseases.