

Submission for OHCHR’s report on climate change and the enjoyment of child rights.

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The relationship between climate change and the rights of the child, human rights obligations to mitigate and adapt to climate change and examples of how the realisation of the rights of the child can contribute to more effective climate action

Nearly all of the rights of children are impacted in some way by climate change. Some of the core international treaties explicitly frame their provisions in terms of environmental rights,¹ while other treaties include rights that apply in the context of climate change. Increased malnutrition, the destruction of habitats and the exposure of children to diseases related to change in climate all clearly engage the right to health, to an adequate standard of living as well as the right to life, survival and development.² Climate change may also cause internal displacement or create refugees, triggering States’ well established obligations with respect to these issues.³ These situations may give rise to new applications of rights, but they are addressed by the extensive obligations States have committed themselves to under existing treaties.

The Committee on the Rights of the Child has been alert to the application of established rights in the context of climate change, specifically identifying it as “one of the biggest threats to children’s health”, requiring States to “put children’s health concerns at the centre of their climate change adaptation and mitigation strategies.”⁴ In relation to children’s rights and private businesses, the Committee has also recognised that “environmental degradation and contamination arising from business activities can compromise children’s rights to health, food security and access to safe drinking water and sanitation.”⁵

Despite the rights enjoyed by children under the Convention on the Rights of the Child and other international human rights treaties, the focus on States and international bodies has largely been on mitigating damage being done by climate change rather than States meeting rights obligations engaged by climate change. As OHCHR has noted, “access to justice is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights.”⁶ This principle applies to children’s rights in the context of climate change as it does in all other situations. These rights, whether civil, political, social,

¹ See for example, the International Covenant on Economic, Social and Cultural Rights, Article 12(2)(b); Convention on the Rights of the Child, Article 24(2)(c) and 29(1)(e).

² Convention on the Rights of the Child, Articles 24, 27 and 6 respectively.

³ Convention on the Rights of the Child, Article 22. The first cases in which individuals have claimed to be climate change refugees have already been heard, see *Teitiota v Ministry of Business Innovation and Employment* [2015] NZSC 107, Supreme Court of New Zealand. Available at: <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZSC/2015/107.html>.

⁴ Committee on the Rights of the Child, *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health*, CRC/C/GC/15, 17 April 2013, para. 50.

⁵ Committee on the Rights of the Child, *General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights*, CRC/C/GC/16, 17 April 2013, para. 19.

⁶ *Report of the United Nations High Commissioner for Human Rights on Access to justice for children*, A/HRC/C/25/35, 16 december 2013, para. 3.

economic or cultural are justiciable and should be legally enforceable, not subject solely to voluntary commitments.⁷

Examples of the way that the realisation of children's rights has contributed to effective climate action will be addressed in context in responses to the following questions.

Existing commitments, legislation and other measures adopted by States and other duty-bearers, such as businesses, in climate change mitigation and adaptation which are designed to protect the best interests of the child.

The best interests of the child is one of the general principles of the Convention on the Rights of the Child, necessary for the effective implementation of all of the rights of the Convention.⁸ The cross-cutting nature of the best interests of the child within the Convention is particularly important in the context of climate change, which engages most provisions of the Convention. In this respect, this submission will take a slightly broader approach to addressing existing commitments and legislation to protect the rights of children.

Obligations to realise children's rights under international human rights treaties in the context of climate change most directly fall on States. The direct incorporation of treaties in their entirety or of specific provisions into national law to make them enforceable is a basic and essential means of ensuring that States meet their obligations with regards to climate change.⁹

There are a range of ways to achieve incorporation, but constitutionally protected rights are among the strongest and most concrete ways of doing so. The strongest provisions clearly set out the right in question and ensure that it is justiciable. The Constitution of Bolivia, for example, enshrines "the right to a healthy, protected and balanced environment"¹⁰ and explicitly provides that this right is granted "to individuals and collectives of present and future generations" and that the right may be enforced through legal action.¹¹ The Nepalese Constitution explicitly creates an entitlement of victims of environmental pollution to be compensated by the person responsible for the pollution.¹² Though far from universal, a number of countries have adopted similar provisions, demonstrating that there is no insurmountable obstacle to States protecting environmental rights within national human rights law.

⁷ Committee on the Rights of the Child, General Comment No. 5 (2003) on General measures of implementation, CRC/GC/2003/5 para. 6.

⁸ Committee on the Rights of the Child, General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November 2003, para. 12.

⁹ Committee on the Rights of the Child, General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November 2003, para. 20.

¹⁰ Constitution of Bolivia, Article 33. English translation available at: https://www.constituteproject.org/constitution/Bolivia_2009?lang=en.

¹¹ Constitution of Bolivia, Article 34

¹² Constitution of Nepal, Article 30(2). English translation available at: https://www.constituteproject.org/constitution/Nepal_2015?lang=en

The duty to realise children’s rights is not, however, limited to States, but extends too to private individuals and business. Great emphasis is placed internationally on the the UN ‘Protect, Respect and Remedy’ Framework for Business and Human Rights, with regards to holding private institutions responsible for human rights, but the principles do not create new international law obligations or undermine any existing legal obligation under international law.¹³

As recognised by the Committee on the Rights of the Child, “the duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises.”¹⁴ This obligation requires that business meet their responsibilities involving children’s rights and that States ensure that they do so.¹⁵ States should not directly or indirectly facilitate, aid and abet any infringement of children’s rights, and to this end, they have an obligation to ensure that all actors, including businesses, respect children’s rights.¹⁶ Where a State has failed to undertake the necessary, appropriate and reasonable measures to prevent businesses from causing or contributing to abuses of children’s rights or to provide remedies for these abuses it has breached its own obligations.¹⁷ States are not exempted from their obligations under the Convention on the Rights of the Child when they outsource or privatise services that impact on the fulfilment of children’s rights.¹⁸

Guidance on what further actions need to be taken to adequately integrate children’s rights within climate change mitigation and adaptation policies, practices and decisions.

Establishing access to justice for children in the context of climate change is a key means of ensuring that States and private actors are held accountable for obligations in this setting. Where rights and their corresponding obligations are enforceable and remedies available, children are given the power to challenge failures and push for increasing standards. As noted above, access to justice is a corollary to all rights, but certain limits on access to justice particularly apply with regards to climate change and need to be addressed to adequately integrate children’s rights within climate change policies and practices.

Climate change is a global problem: its effects and violations of relevant rights cross borders. To this end, extraterritorial jurisdiction is an essential tool to hold multinational corporations responsible for environmental damage they have caused. A company may cause environmental damage in one country, but the responsible person or the corporation’s assets may be in another jurisdiction. There are well established mechanisms and legal practices and models that could be used to address this problem. The Alien Torts Statute in

¹³ Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and remedy” Framework*, p. 1. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

¹⁴ Committee on the Rights of the Child, *General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights*, CRC/C/GC/16, 17 April 2013, para. 8

¹⁵ Ibid.

¹⁶ Ibid. at para. 26.

¹⁷ Ibid. at para. 28.

¹⁸ Ibid at para. 33.

the United States, for example, can be used to file cases for abuses under international human rights law that took place in other countries.¹⁹

Climate change, by its nature also impacts large numbers of people and some of its effects are experienced by the whole population of a country. This fact creates a potential barrier where national rules on legal standing - the rules on who is able to bring a complaint in law - require individuals to be specifically affected by a harm. States should avoid restrictive rules of standing that prevent cases being brought to challenge widespread harm in the context of climate change.

The concept of intergenerational justice is also key to the protection of children's rights engaged by climate change. In essence, the principle states that there should be distributive justice between generations and that the rights of different generations should be equal over time.²⁰ The concept has been underdeveloped in national law, though it has been the basis of litigation in the Philippines, used to allow class actions for the enforcement of benefits to future generations.²¹ The establishment of the principle at the national level would provide a legal basis to challenge short termist laws and policies that do not take account of the rights of future generations.

Commitments and best practices for effectively engaging children or youth in climate-related decision-making processes and climate action.

Children's right to be heard and participate covers every issue that concerns a child. States have an obligation to ensure that any child capable of forming his or her own views has a right to express those views in all matters affecting the child and that these views be given due weight in accordance with the age and maturity of the child.²² This right takes on particular importance with regards to climate change, as children are the most affected by the negative consequences entailed. This right equally covers political participation and participation within the legal system.

Children's right to access justice is key in this context. The legal system is a crucial mechanism for holding States, business and private individuals responsible for their obligations in relation to climate change and children. Access to justice for children requires that children are able to use and trust the legal system to protect their human rights and the legal system provides them with the means to obtain a quick, effective and fair response to protect their rights. It also requires that children have the means to prevent and solve disputes; mechanisms to control the abuse of power; and that all of this is available through

¹⁹ See, for example, *John Doe and others v. Nestle USA and others* [2015] Case No. 10-56739. Summary and full judgment available at: www.crin.org/node/42727. Please note that the case itself addressed child slavery rather than in relation to climate change, but it is used here to demonstrate the potential for extraterritorial jurisdiction for human rights violations.

²⁰Institute of Development Studies, *In focus policy briefing Issue 13: Children in a changing climate - Lessons from research and practice*, November 2009. Available at: <https://www.ids.ac.uk/files/dmfile/IF13.2.pdf>

²¹ *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources* [1994] 33 ILM 173. Summary and full judgment available at: www.crin.org/node/6943.

²² Convention on the Rights of the Child, Article 12(1).

a transparent, efficient, accountable and affordable process. The purpose of this submission is to highlight the issues that arise specifically in the context of children's rights and climate change, so this submission will not examine the realisation of access to justice for children in depth, but in a context where "child participation" is so often tokenistic, it is important to note that at its core is the right of children to enforce their rights and achieve remedies.

Participation of children in the legal system in the context of climate change is not theoretical. Although limited by the restrictions children face in engaging with the legal system, children have been involved in bringing some of the key legal challenges with regards to environmental rights and climate change. Children in the Philippines filed some of the early environmental protection cases in their country in 1993 to challenge the destruction of rainforests²³ and a case is currently moving through the United States courts on whether climate change violates children's constitutional rights to life, liberty and property.²⁴

The full realisation of children's rights to political expression are also key to ensuring effective participation in decision-making processes and climate action. Children are entitled to partake in the same forms of political expression as adults, including in political protest: the free expression guarantees under the Convention on the Rights of the Child mirror those under the International Covenant on Civil and Political Rights which guarantee these rights to everyone.²⁵ Voting is the a core means of engaging in the political system and States have begun to reduce ages to vote, Scotland, for example, allowed children to vote from the age of 16 in 2015.²⁶ Though as yet no country has removed age barriers entirely and these more gradual measures are rare, the extension of voting rights to children ensures they are able to fully engage in politics on all issues, including in relation to climate change.²⁷

Additional information on challenges confronting States and other duty-bearers in their efforts to protect the rights of the child from the impacts of climate change.

The Sabin Center for Climate Change Law at Columbia Law School has compiled a [database of relevant laws and policies](#) in more than 100 countries. In February 2015 the Centre published a white paper on '[Climate change in the courts: an assessment of non-US climate litigation](#)'.

A selection of case law summaries related to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters is available on the [UNECE website](#).

²³ *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources* [1994] 33 ILM 173. Summary and full judgment available at: www.crin.org/node/6943.

²⁴ *Kelsey Cascadia Rose Juliana et al v. Unites States of America et al* [2016] Case No. 6:15-cv-01517-TC, available at:

<https://static1.squarespace.com/static/571d109b04426270152febe0/t/5824e85e6a49638292ddd1c9/1478813795912/Order+MTD.Aiken.pdf>.

²⁵ Compare Convention on the Rights of the Child, Art. 13 with International Covenant on Civil and Political Rights, Article 19.

²⁶ Scottish Elections (Reduction of Voting Age) Act 2015, Section 1. Available at: <http://www.legislation.gov.uk/asp/2015/7/contents/enacted>.

²⁷ For discussion of children and the right to vote, see CRIN, Age is Arbitrary: Discussion paper on setting minimum ages, April 2016. Available at: www.crin.org/node/42535.

The [Environmental Justice Atlas](#) is a database of 1658 cases of environmental disputes in ten categories, also including a map logging '[climate debt](#)'.