Submission to the OHCHR for the preparation of the report to the Human Rights Council: “Realizing children’s rights through a healthy environment”

I. INTRODUCTION

1. ClientEarth is grateful for the opportunity to submit its input to the Office of the High Commissioner for Human Rights for the purpose of preparation of the report to the Human Rights Council's annual full-day meeting on the rights of the child (2020) on the theme “Realizing children’s rights through a healthy environment”. This submission will focus primarily on the issue of air pollution, the right to clean air as a component of the right to a healthy environment and the main obstacles that underestimate the fulfilment of the right to clean air, mainly taking Europe as an example.

II. MONITORING OF POLLUTION AND ENVIRONMETNAL RISKS TO CHILDREN (Question 6)

1. Environmental pollution is one of the most pressing issues of our time and is the largest environmental cause of disease and premature death in the world.[[1]](#footnote-1) Yet, monitoring of environmental pollution, including air pollution, and the risks it poses for humans including children, is not done in a standardised manner on a global level.
2. In Europe, the obligation to monitor environmental pollution comes from the European Union law, the Aarhus Convention[[2]](#footnote-2) and the European Court of Human Rights' case law on environment[[3]](#footnote-3) particularly in the context of decision-making procedures affecting the environment[[4]](#footnote-4) and for persons living in the vicinity of a polluting industrial activity.[[5]](#footnote-5) Currently a case is pending before the European Court of Human Rights that touches upon the State obligation to monitor environmental pollution and its adverse effect to human health.[[6]](#footnote-6) ClientEarth, as an amicus curiae, has submitted that under international law there is a legal obligation to (i) monitor levels of environmental pollution and assess its potential harmful impacts on health and life of people, (ii) actively and systematically disseminate information on environmental pollution and the related health threats and (iii) adopt all possible measures to avoid, prevent or reduce harmful effects on human life and health caused by environmental pollution.[[7]](#footnote-7)
3. Further, article 5(1) of the Aarhus Convention requires its State Parties to “ensure” that (a) “public authorities possess and update environmental information[[8]](#footnote-8) which is relevant to their function” and (b) “mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment”.[[9]](#footnote-9) This obligation not only requires dissemination of that information that an authority holds but requires public authorities to collect information proactively. According to the Aarhus Convention Implementation Guide: “[t]he requirements for active collection and dissemination of information imply a sense of urgency and importance that certain types of information should reach the public”.[[10]](#footnote-10) The Guide recommends inter alia that Parties establish monitoring and research systems that gather this information.[[11]](#footnote-11) The Aarhus Convention imposes a clear obligation to “disseminate immediately and without delay” all information “which could enable the public to take measures to prevent or mitigate harm arising” from “any imminent threat to human health or the environment”, whether it is caused by human activities or due to natural causes.[[12]](#footnote-12) This provision seeks to ensure that persons are informed of any risks to their health arising from polluting activities, so they can take necessary precautions and/or appeal to the relevant authorities for urgent measures.
4. Within the European Union, these principles are also given shape in specific sectoral areas. In the context of air quality, Directive 2008/50 on ambient air quality[[13]](#footnote-13) enshrines the obligation to collect and disseminate information.[[14]](#footnote-14) Please note that the States are required to monitor air quality only in zones and agglomerations where the level of pollutants exceeds the relevant “upper assessment threshold” set by the directive but at the same time Member States shall situate sampling points in such a way as to monitor air quality in “the areas within zones and agglomerations where the highest concentrations occur”.[[15]](#footnote-15) In its recent ruling on Case C-723/17 Craeynest, the CJEU granted access to justice to citizens to enforce rules on air quality monitoring and assessment, and required more intensive judicial review of scientifically complex assessments, recognising their importance to protect human health and life.[[16]](#footnote-16)
5. Despite the legal obligations, many countries are failing to adequately monitor[[17]](#footnote-17) or report[[18]](#footnote-18) air pollution within the European Union and beyond. In particular, countries that depend on coal in the CEE region and Western Balkans fall short on providing sufficient information regarding air quality and its adverse effect on health[[19]](#footnote-19).
6. The official data also does not particularly target the areas around schools. It is non-governmental organisations that try to monitor and analyse the impact of air pollution on children. The Health and Environment Alliance (HEAL) project to monitor air quality in schools in Paris[[20]](#footnote-20), Berlin[[21]](#footnote-21), London[[22]](#footnote-22), Madrid[[23]](#footnote-23) and Sophia[[24]](#footnote-24) provides a notable example. Additionally FIA Foundation prepared the report that summarises work between schools, led by the London Sustainability Exchange (LSx), in partnership with UN Environment and Clean Air Asia. Pupils in London, Nairobi and New Delhi took part in a project to understand, monitor and take action on air pollution around their schools[[25]](#footnote-25). Some form of remedy to the situation could be Low Emission Zones, Zero Emission Zones or traffic exclusion zones around schools. Please see the research on the Impact of London's low emission zone on air quality and children's respiratory health.[[26]](#footnote-26)

III. IMPACT OF ENVIRONMETAL POLLUTION, ESPECIALLY AIR POLLUTION, ON CHILDREN'S RIGHTS - INCLUDING THE RIGHT TO LIFE, HEALTH AND EDUCATION (Question 1)

1. It has been estimated by the Lancet Commission on pollution and health that "pollution was responsible for 9 million premature deaths in 2015 - 16% of all deaths worldwide—three times more deaths than from AIDS, tuberculosis, and malaria combined and 15 times more than from all wars and other forms of violence”.[[27]](#footnote-27)
2. Air pollution is a major cause of premature death and disease and is the single largest environmental health risk in Europe causing the equivalent of around 400 000 premature deaths per year. Both short- and long-term exposure of children and adults to air pollution can lead to reduced lung function, respiratory infections and aggravated asthma. Maternal exposure to ambient air pollution is associated with adverse impacts on fertility, pregnancy, new-borns and children.[[28]](#footnote-28) The Royal College of Physicians and Royal College of Paediatrics and Child Health in its 2016 report[[29]](#footnote-29) dealt with the problem of air pollution and its negative impact on pregnancy and foetus development as well as children. Some pollutants, when breathed by the mother, can pass through the placenta to the developing baby. Particulates and heavy metals are two examples. Air pollution can affect growth of the unborn babies and may be linked to premature birth.[[30]](#footnote-30)
3. Air pollution has various sources. In Europe the most common sources include: power plants, road transport, domestic heating, agriculture and waste.[[31]](#footnote-31) Air pollutants from coal power plants are not only harmful but they are persistent. Particles that result from power plants are ozone, sulphur dioxide gas, nitrogen oxides, mercury and sulphate particulate matter[[32]](#footnote-32). These chemicals are associated with asthma, respiratory diseases, heart disease and have been shown to cause cognitive and lung developmental stunts[[33]](#footnote-33). Similar data emerge in relation to nitrogen dioxide and particles that are emitted by road traffic.[[34]](#footnote-34) Children are especially affected by these activities as pound per pound, children breathe 50% more air than adults due to their higher activity levels.[[35]](#footnote-35) This, coupled with the fact that children spend more time outdoors puts them at higher risk to health complications that arise due to air pollution.[[36]](#footnote-36) Such exposure can lead to higher asthma attacks and higher rate of hospitalizations related to respiratory related issues that can deprive children of education due to lost school days.[[37]](#footnote-37)
4. The above data clearly show the negative impact air pollution has on children's right to life, health, physical and personal integrity and education affecting the life of children now but also their future.

IV. MAIN GAPS AND CHALLENGES IN REGARDS TO LEGAL MEASURES INCLUDING REMEDY IN CASE OF THEIR RIGHTS VIOLATION LINKED TO POLLUTION (Question 3)

1. Despite the clear negative effects of environmental and more specifically air pollution on the life and health of children and the negative effect it has on their right to education, the current system of remedies seems to be inadequate to provide sufficient redress. Scientific evidence increasingly informs our understanding of the risks to life and health caused by environmental pollution. However, children affected by such pollution face several challenges when seeking legal redress, such as: (i) detecting its existence and measuring pollution levels – for instance, air pollution is commonly referred to as the “invisible killer”[[38]](#footnote-38), (ii) identifying its sources – often there is combination of point sources (industrial plants) and diffuse sources (traffic, domestic heating) that may be close or far away (transboundary pollution) and (iii) establishing causal links between pollution and health impacts – pollution is one of many factors contributing to the development of diseases (multi-factor causality).
2. We would like to draw your attention to two cases that illustrate the legal obstacles and challenges that children and their parents face when looking for legal remedies. First, the case of Ella Kissi-Debrah from the United Kingdom, a nine-year old girl who died of an asthma attack in 2013. Originally, the state did not identify air pollution as a causal factor in her death. Subsequent evidence showing a striking correlation between spikes in air pollution and Ella's repeated hospital admissions has led the court to grant, in 2019, a new inquest into the cause of her fatal asthma attack. This is yet to commence.[[39]](#footnote-39) Second, the case of a mother and daughter in France who suffered severe health problems because of air pollution in Paris and consequently had to moved to Orleans.[[40]](#footnote-40) On 25 June 2019 the first instance court dismissed their claims stating that (i) although the State was responsible for the air pollution (ii) the plaintiffs did not manage to prove the causal link between their health problems and air pollution.[[41]](#footnote-41)
3. Other form of legal obstacle that exists in some jurisdictions within the European Union includes blocking citizens from access the courts in order to challenge air quality plans that fail to reduce air pollution to within legal limits. ClientEarth has called on the European Commission to take action against Bulgaria and Poland for blocking people’s access to the courts to protect their right to breathe clean air.[[42]](#footnote-42) Such obstacles stops parents from influencing policies and measures that could protect life and health of their children.

V. MEASURES TO FULFILL CHILDREN'S RIGHT TO PARTICIPATE AND BE HEARD (Question 5)

1. As far as ClientEarth is aware, there are no special procedures or measures within the European legal framework to give children separate rights to participate or to be heard in the context of environmental pollution including air pollution. The general legal rules apply. The most common approach is that a legal guardian (predominantly parent) is representing children in various legal proceedings when they seek redress (see example of a French case cited above).
2. The Aarhus Convention does not make special provision for the participation of children. However, they clearly enjoy equal rights to adults based on article 2(4) of the Aarhus Convention which defines the “public” (a central right-holder under the Convention) as “one or more natural or legal persons”. Paragraph 20 (e)(i) of the Maastricht Recommendations makes some special provisions to include young people stating that "special attention should be paid to identifying groups that are for different reasons hard to reach (…) such as children".[[43]](#footnote-43)

VI. NATIONAL LAWS AND POLICIES ON ENVIRONMENTAL DUE DILIGENCE (Question 4)

1. Due diligence is a comprehensive appraisal that businesses should undertake to avoid, prevent and address adverse impacts of their operations, suppliers and investments. ClientEarth legal experts have teamed up with Global Witness[[44]](#footnote-44) to produce a briefing for EU policy-makers outlining how greater scrutiny of business practices, imports, production and investments will greatly improve protections for people and the planet. Details of that legal briefing can be found [here.](https://www.documents.clientearth.org/wp-content/uploads/library/2019-07-23-strenghtening-corporate-responsibility-the-case-for-mandatory-diligence-in-the-eu-to-protect-people-and-the-planet-coll-en.pdf)
2. Examples of national regulation addressing environmental and human rights (including child labour) due diligence that we are aware of include France[[45]](#footnote-45), the Netherlands law on the Child Labour Due Diligence[[46]](#footnote-46) and Finland[[47]](#footnote-47).

|  |
| --- |
|  |

1. Special Rapporteur on human rights and hazardous substances and wastes in his first report to UN General Assembly in 2018, A/73/567, 15 November 2018; <https://undocs.org/A/73/567> [↑](#footnote-ref-1)
2. The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (“Aarhus Convention”), <https://www.unece.org/env/pp/introduction.html>. [↑](#footnote-ref-2)
3. <https://echr.coe.int/Documents/FS_Environment_ENG.pdf> [↑](#footnote-ref-3)
4. See, among others, *Taskin*, para. 119; *Hatton and Others*, para. 128. [↑](#footnote-ref-4)
5. See, among others, *Guerra and Others*, para. 60. [↑](#footnote-ref-5)
6. Di Caprio and others against Italy, Applications nos. 39742/14, 51567/14, 74208/14 and 21215/15

   <http://hudoc.echr.coe.int/eng?i=001-191781> [↑](#footnote-ref-6)
7. See point V of the amicus: <https://www.documents.clientearth.org/library/download-info/clientearth-amicus-curiae-in-case-di-caprio-and-others-v-italy-september-2019/> and <https://www.clientearth.org/lawyers-weigh-in-on-human-rights-violations-in-italys-waste-crisis/> [↑](#footnote-ref-7)
8. The Convention provides a non-exhaustive, very broad definition of “environmental information” in Article 2(3). The definition encompasses any information in written, visual, aural, electronic or any other material form on the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape etc as well as factors, including substances, affecting or likely to affect these elements of the environment. See the Aarhus Convention Implementation Guide, available at: <http://www.unece.org/index.php?id=35869>, pp. 50-55 for a more detailed explanation of the elements of this definition. [↑](#footnote-ref-8)
9. This obligation is implemented by EU law, under article 7(1) of Directive 2003/4/EC on public access to environmental information. [↑](#footnote-ref-9)
10. See Aarhus Convention Implementation Guide, p. 95. [↑](#footnote-ref-10)
11. Ibid, pp. 97, 98 and 100. [↑](#footnote-ref-11)
12. Article 5(1)(c) Aarhus Convention, Article 7(4) Directive 2004/3. [↑](#footnote-ref-12)
13. <https://ec.europa.eu/environment/air/quality/existing_leg.htm> [↑](#footnote-ref-13)
14. [Articles 5, 6 and 7 and Annexes II, III and V](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1486474738782&uri=CELEX:02008L0050-20150918). [↑](#footnote-ref-14)
15. Directive, Annex III, Section B, paragraph 1.(a). [↑](#footnote-ref-15)
16. Case C-723/17, Craeynest and Others, ECLI:EU:C:2019:533, § 33. [↑](#footnote-ref-16)
17. Representativeness and comparability of measurement in accordance with Directive 2008/50/EC on ambient air quality and cleaner air for Europe, <http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631055/IPOL_STU(2019)631055_EN.pdf> [↑](#footnote-ref-17)
18. <https://www.clientearth.org/press/new-brussels-air-pollution-figures-mask-health-risk-reality/> [↑](#footnote-ref-18)
19. Europe’s Dark Cloud – How coal-burning countries are making their neighbours sick, CAN Europe, HEAL, WWF European Policy Office, Sandbag, June 2016. See p. 31-34 <https://www.env-health.org/IMG/pdf/dark_cloud-full_report_final.pdf> [↑](#footnote-ref-19)
20. <https://www.env-health.org/wp-content/uploads/2019/09/Paris-city-report-Healthy-Air-Healthier-Children_EN.pdf> [↑](#footnote-ref-20)
21. <https://www.env-health.org/wp-content/uploads/2019/09/Berlin-city-report-Healthy-air-children_EN.pdf> [↑](#footnote-ref-21)
22. Traffic air pollution and its impact on the air quality inside the school: London <https://www.env-health.org/wp-content/uploads/2019/06/Healthy-air-children_London.pdf> [↑](#footnote-ref-22)
23. <https://www.env-health.org/wp-content/uploads/2019/06/Healthy-air-children_Madrid.pdf> [↑](#footnote-ref-23)
24. <https://www.env-health.org/wp-content/uploads/2019/09/Sofia-city-report-Healthy-air-children_EN.pdf> [↑](#footnote-ref-24)
25. <https://www.fiafoundation.org/connect/publications/cleaner-air-4-schools> [↑](#footnote-ref-25)
26. [Impact of London's low emission zone on air quality and children's respiratory health: a sequential annual cross-sectional study](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(18)30202-0/fulltext), the Lancet, volume 4, issue 1, PE28-E40, January 2019; press release: <https://www.qmul.ac.uk/media/news/2018/smd/study-of-2000-children-suggests-london-air-pollution-is-restricting-lung-development.html> [↑](#footnote-ref-26)
27. *Lancet* Commission on pollution and health, Volume 391, ISSUE 10119, P462-512, February 03, 2018, <https://doi.org/10.1016/S0140-6736(17)32345-0> [↑](#footnote-ref-27)
28. [European Environmental Agency Report No 12/2018](https://www.eea.europa.eu/publications/air-quality-in-europe-2018), p. 11 "Air quality in Europe - 2018 report". Please note that on 16 October EEA will issue its 2019 air quality report. [↑](#footnote-ref-28)
29. Royal College of Physicians. Every breath we take: the lifelong impact of air pollution. Report of a working party. London: RCP, 2016, chapter 3. <https://www.rcplondon.ac.uk/projects/outputs/every-breath-we-take-lifelong-impact-air-pollution> [↑](#footnote-ref-29)
30. Royal College of Physicians. Every breath we take: the lifelong impact of air pollution. Report of a working party. London: RCP, 2016, p. 35; <https://www.rcplondon.ac.uk/projects/outputs/every-breath-we-take-lifelong-impact-air-pollution> [↑](#footnote-ref-30)
31. [EEA Air Quality report No 12/2018](https://www.eea.europa.eu/publications/air-quality-in-europe-2018), p. 20. [↑](#footnote-ref-31)
32. Hill, L. Bruce, and Martha Keating. “Children at Risk: How Air Pollution from Power Plants Threatens the Health of America's Children.” Physicians for a Social Responsibility Report, Apr. 2002. [↑](#footnote-ref-32)
33. Ibid. [↑](#footnote-ref-33)
34. [Impact of London's low emission zone on air quality and children's respiratory health: a sequential annual cross-sectional study](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(18)30202-0/fulltext), the Lancet, volume 4, issue 1, PE28-E40, January 2019; press release: <https://www.qmul.ac.uk/media/news/2018/smd/study-of-2000-children-suggests-london-air-pollution-is-restricting-lung-development.html> [↑](#footnote-ref-34)
35. Hill, L. Bruce, and Martha Keating. “Children at Risk: How Air Pollution from Power Plants Threatens the Health of America's Children.” Physicians for a Social Responsibility Report, Apr. 2002. [↑](#footnote-ref-35)
36. Ibid. [↑](#footnote-ref-36)
37. Ibid. [↑](#footnote-ref-37)
38. See G. Fuller, *The Invisible Killer. The Rising Global Threat of Air Pollution- and How We Can Fight Back’s*, [↑](#footnote-ref-38)
39. <https://www.unenvironment.org/news-and-stories/story/new-inquest-death-london-girl-could-boost-air-pollution-fight> and <https://www.theguardian.com/environment/2019/jan/11/ella-kissi-debrah-mother-wins-right-seek-new-inquest-high-court-air-pollution> [↑](#footnote-ref-39)
40. <https://www.respire-asso.org/action-en-justice-contre-letat-entretien-avec-farida/> [↑](#footnote-ref-40)
41. <http://montreuil.tribunal-administratif.fr/Actualites/Actualites-Communiques/Communique-de-presse-du-25-juin-2019> [↑](#footnote-ref-41)
42. <https://www.clientearth.org/lawyers-report-bulgaria-and-poland-to-eu-commission-for-blocking-access-to-justice-to-ensure-clean-air/> [↑](#footnote-ref-42)
43. Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters, UNECE; <https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf> [↑](#footnote-ref-43)
44. <https://www.clientearth.org/eu-can-better-protect-environment-by-strengthening-corporate-responsibility/> and legal briefing: <https://www.documents.clientearth.org/wp-content/uploads/library/2019-07-23-strenghtening-corporate-responsibility-the-case-for-mandatory-diligence-in-the-eu-to-protect-people-and-the-planet-coll-en.pdf> [↑](#footnote-ref-44)
45. <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id> and <https://www.business-humanrights.org/en/sherpa-releases-new-guidance-legal-analysis-on-french-duty-of-vigilance-law> [↑](#footnote-ref-45)
46. <https://www.lexology.com/library/detail.aspx?g=7ea77664-d4a4-4c0b-b1db-46c40ba630f3> [↑](#footnote-ref-46)
47. <https://tem.fi/artikkeli/-/asset_publisher/yritysvastuulain-selvitys-kaynnistyy?_101_INSTANCE_ArnNKA3Xnf7q_languageId=en_US> [↑](#footnote-ref-47)