**Submission for the report of the Special Rapporteur on human rights and the environment on healthy ecosystems and human rights: sustaining the foundations of life**

This submission was made by the Child Rights International Network - CRIN ([www.crin.org](http://www.crin.org)) in May 2020.

This submission focuses on the ways in which declining biodiversity and degrading ecosystems adversely impact the rights of children and the corresponding obligations on States and businesses to realise children’s rights in this context. Where relevant, the submission also includes information about relevant case law that employs a rights-based approach to this issue.

**The general principles**

The Committee on the Rights of the Child has recognised four general principles required for the implementation of the Convention on the Rights of the Child (CRC),[[1]](#footnote-0) used to interpret and apply all articles of the Convention. In each of these areas, the Committee has addressed environmental degradation.

Best interest of the child

Under the Convention on the Rights of the Child (CRC), in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”[[2]](#footnote-1) The Committee on the Rights of the Child has been clear that actions related to the environment concern children and therefore must be assessed and guided by the best interests of the child.[[3]](#footnote-2) The Committee has defined the best interests principle under the CRC as a threefold concept: a substantive right, a fundamental interpretive legal principle and a rule of procedure,[[4]](#footnote-3) requiring that not only must children's best interests be explicitly considered when making decisions, but the outcome must reflect that children’s best interests are a primary consideration and laws and regulations must be interpreted in this light.

Right to life, survival and development of the child

The Committee on the Rights of the Child has explicitly recognised the ways in which business enterprises impact on the realisation of the right to life, survival and development with regards to environmental degradation and contamination. In particular, the Committee has highlighted that business activities “can compromise children’s rights to health, food security and access to safe drinking water and sanitation” and noted that “selling or leasing land to investors can deprive local populations of access to natural resources linked to their subsistence and cultural heritage; the rights of indigenous populations may be particularly at risk in this context.”[[5]](#footnote-4) The Committee has also recognised that the implementation of article 6 with regard to the business sector requires preventive measures regarding the environmental impact of business.[[6]](#footnote-5)

A growing literature argues that the right to development as well as the right to health are closely linked to the connection to nature.[[7]](#footnote-6) The International Union for the Conservation of Nature (IUCN) has recognised “children’s right to nature and a healthy environment” which includes the child’s inherent “right to connect to nature”, the right to live in an environmental that is not harmful to his or her health or well being and the assurance of the conservation of nature and the protection of the environment for the benefit of present and future generations. The historic resolution called on the IUCN's membership to promote the inclusion of this right within the framework of the UN Convention on the Rights of the Child.[[8]](#footnote-7)

Non-discrimination

The CRC includes non-discrimination provisions which requires States to respect and ensure all Convention rights without discrimination of any kind.[[9]](#footnote-8) This provision is bolstered by a right providing that children of indigenous origins “shall not be denied the right, in community with other members of his or her own group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.”[[10]](#footnote-9) The Committee has recommended that States “closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the rights [of indigenous children] to life, survival and development to the maximum extent possible”.[[11]](#footnote-10) The 2020 report of the Office of the High Commissioner for Human Rights on realising children’s rights through a healthy environment also recognised that, “[i]ndigenous peoples and traditional communities that rely on forests, fisheries and other natural ecosystems for their survival and cultural life are deeply affected by damaged ecosystems.”[[12]](#footnote-11)

Right to be heard and engage in public decision making

Under the CRC, children have a right to be heard in all matters that affect them and due weight must be given to those views in accordance with the age and maturity of the child.[[13]](#footnote-12) This right is underpinned by children’s right to information, freedom of expression, freedom of association, freedom of assembly and access to justice.[[14]](#footnote-13) In order to be fully realised, this principle requires children's views to be heard and given due weight in legislation, policy debates and before courts and complaint mechanisms.

The Committee on the Rights of the Child has made specific recommendations to individual States on realising the right to be heard in this context, including to “[s]trengthen initiatives aimed at increasing child participation and develop toolkits to consult with children on national policy issues that affect them, in particular the issues that children identified as being of most concern for them such as education, climate change and security, and ensure that children’s views are taken into account by local and national authorities".[[15]](#footnote-14)

**Economic, Social and cultural rights**

The CRC specifically addresses the relationship between the economic, social and cultural rights of children in the context of the environment and the Committee on the Rights of the Child has elaborated on the applications of these rights throughout its work.

Right to health and access to nutritious food

The CRC recognises the right of the child to the enjoyment of the highest attainable standard of health.[[16]](#footnote-15) To pursue the implementation of this right, the Convention requires States to “take appropriate measures to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”.[[17]](#footnote-16) Explaining the implementation of this right, the Committee has recommended that States should introduce environmental interventions to address climate change and “put children’s health concerns at the centre of their climate change adaptation and mitigation strategies”.[[18]](#footnote-17)

The Committee’s General comment No. 16 on state obligations regarding the impact of the business sector on children’s rights, also recognises that “[c]hildhood is a unique period of physical, mental, emotional and spiritual development and violations of children’s rights, such as exposure to (...) unsafe products or environmental hazards may have lifelong, irreversible and even transgenerational consequences”. It adds 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. [[19]](#footnote-18) As stated by the Office of the High Commissioner for Human Rights, “the quality of the environment is a fundamental determinant of children’s rights to health, which depends upon a healthy and diverse ecosystem.” [[20]](#footnote-19)

Right to education

The CRC recognises the right of the child to education[[21]](#footnote-20) and includes “the development of respect for the natural environment” as well as “the preparation of the child for responsible life in a free society” within the aims to which education of children must be directed.[[22]](#footnote-21) Applying this right, the Committee has stated that education for the development of respect for the natural environment must link issues of environment and sustainable development with socio-economic, sociocultural and demographic issues” and “should be learnt by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.[[23]](#footnote-22) The Committee has also made explicit recommendations to individual States to “[s]trengthen measures to increase children’s awareness and preparedness for climate change and natural disasters, by incorporating it into the school curriculum and teachers’ training programmes”.[[24]](#footnote-23)

**Access to justice**

Access to justice for children is a fundamental right and an essential prerequisite for the protection and promotion of all other human rights.[[25]](#footnote-24) Ensuring the realisation of this right requires designing justice systems to meet the specific needs of children to enforce all human rights, but the nature and scale of environmental rights violations requires further adaptations. As addressed by the UN High Commissioner for Human Rights, “prevention is the only way to fully protect children’s rights from environmental harms”, requiring “effective regulation and enforcement mechanisms such as injunctive relief by judicial tribunals or administrative bodies”.[[26]](#footnote-25) When environmental harms do occur, States should ensure timely, effective access to remedies, including through penalties, compensation, judicial action and measures to promote recovery after harm has been caused or contributed to by third parties. For these measures to be effective, immediate steps must be taken by all to prevent further damage to children’s health and development and repair any damage.[[27]](#footnote-26)

Children have often been at the forefront of litigation to pursue justice for environmental rights abuses. For example, a national court in Cancun permanently suspended a development project after a group of 113 Mexican children filed a lawsuit arguing that they have the constitutional right to a healthy environment. A direct impact of their legal action was the preservation of a mangrove forest.[[28]](#footnote-27)

**Future generations**

Intergenerational justice is not primarily a children’s rights issue, rather it is about ensuring that there is distributive justice between generations and that the rights of different generations are equal over time. Nonetheless, the need to ensure that children of today and the future have an impact on current obligations of States. As the Office of the High Commissioner for Human Rights has noted, “[e]nvironmental degradation continues to occur globally due to worsening climate change, deforestation, biodiversity loss and the pollution and deterioration of the Earth’s air land and water. A lack of clean air and water, exposure to hazardous chemicals and waste, the effects of climate change and biodiversity loss prevent children from enjoying their rights today and in the future, as their lifelong health outcomes, well-being and development are compromised.” Furthermore, “all children should enjoy (...) the certainty that biodiversity of the natural world will remain for future generations”.[[29]](#footnote-28)

The rights of future generations have also been recognised within national courts. In the seminal 1994 case of *Minors Oposa v. Secretary of the Departmentment of the Environment and Natural Resources*, the Supreme Court of the Philippines found in favour of a group of children recognising that the destruction of rainforests violated the right to a clean environment, to exist from the land and to provide for each generation.[[30]](#footnote-29)Future generations rights have also been recognised and relied upon by the Supreme Court of Colombia, in a lawsuit involving young people suing the national government for failing to curb deforestation in Colombia’s Amazon region.[[31]](#footnote-30)

The principle takes on particular importance in the context of issues related to natural resources, and the preservation of biodiversity, to mitigate against short-termist policy that will affect the realisation of the rights of future generations.

1. Committee on the Rights of the Child, *General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, 27 November 2003,, para. 15. [↑](#footnote-ref-0)
2. Convention on the Rights of the Child, Article 3(1). [↑](#footnote-ref-1)
3. Ibid. at para. 19, 30. [↑](#footnote-ref-2)
4. Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14, 29 May 2013, para. 6. [↑](#footnote-ref-3)
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. [↑](#footnote-ref-4)
6. Ibid. at para. 20. [↑](#footnote-ref-5)
7. See for example: How to protect kids for nature-deficit disorder <https://greatergood.berkeley.edu/article/item/how_to_protect_kids_from_nature_deficit_disorder>; LOUV, R. Outdoors for All. Sierra Magazine. May/June 2019. Available at: <https://www.sierraclub.org/sierra/2019-3-may-june/feature/outdoors-for-all-nature-is-a-human-right> [↑](#footnote-ref-6)
8. IUCN WCC-2012-Res-101-EN on ‘Child’s right to connect with nature and to a healthy environment’. Available at: <https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC_2012_RES_101_EN.pdf> [↑](#footnote-ref-7)
9. Convention on the Rights of the Child, Article 2. [↑](#footnote-ref-8)
10. Convention on the Rights of the Child, Article 30. [↑](#footnote-ref-9)
11. Committee on the Rights of the Child, *General Comment No. 11 (2009) on indigenous children and their rights under the Convention*, CRC/C/GC/11, 12 February 2009, para. 35. [↑](#footnote-ref-10)
12. United Nations High Commissioner for Human Rights, *Realizing the rights of the child through a healthy environment*, A/HRC/43/30, 3 January 2020, para. 44. See also A/73/188, para. 23. [↑](#footnote-ref-11)
13. Convention on the Rights of the Child, Article 12. [↑](#footnote-ref-12)
14. United Nations High Commissioner for Human Rights, *Realizing the rights of the child through a healthy environment*, A/HRC/43/30, 3 January 2020, para 58. [↑](#footnote-ref-13)
15. Committee on the Rights of the Child, *Concluding observations on the sixth periodic report of Hungary*, CRC/C/HUN/CO/6, January 2020, para. 18(e). See also CRC/C/TUV/CO/2-5, para. 42(e); CRC/C/COK.CO.2-5, para. 44(c). [↑](#footnote-ref-14)
16. Convention on the Rights of the Child, Article 24. [↑](#footnote-ref-15)
17. Ibid. [↑](#footnote-ref-16)
18. 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 (art. 24)*, CRC/C/C/15, 17 April 2013, para. 50. [↑](#footnote-ref-17)
19. 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. 4. [↑](#footnote-ref-18)
20. United Nations High Commissioner for Human Rights, *Realizing the rights of the child through a healthy environment*, A/HRC/43/30, 3 January 2020, para. 48. [↑](#footnote-ref-19)
21. Convention on the Rights of the Child, Article 28. [↑](#footnote-ref-20)
22. Convention on the rights of the Child, Article 29(1)(d)-(e). [↑](#footnote-ref-21)
23. Committee on the Rights of the Child, *General Comment No. 1 (2001) on Article 29(1): The aims of education*, CRC/GC/2001/1, 17 April 2001, para. 13. [↑](#footnote-ref-22)
24. See Committee on the Rights of the Child, *Concluding observations on the second periodic report of the Federated States of Micronesia*, CRC/C/FSM/CO/2, March 2020, para. 55 b [↑](#footnote-ref-23)
25. Office of the UN High Commissioner for Human Rights, *Access to justice for children*, A/HRC/25/35, 16 December 2013, para. 3. [↑](#footnote-ref-24)
26. United Nations High Commissioner for Human Rights, *Realizing the rights of the child through a healthy environment*, A/HRC/43/30, 3 January 2020, para. 62. [↑](#footnote-ref-25)
27. Ibid. [↑](#footnote-ref-26)
28. Quartz,, “Kid environmentalists have derailed a $900 million development in a popular Mexican resort town”, 13 November 2015. Available at:: <https://qz.com/548754/kid-environmentalists-have-derailed-a-900-million-development-in-a-popular-mexican-resort-town/> [↑](#footnote-ref-27)
29. United Nations High Commissioner for Human Rights, *Realizing the rights of the child through a healthy environment*, A/HRC/43/30, 3 January 2020, para. 2 and 48. [↑](#footnote-ref-28)
30. *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources* [1994] 33 ILM 173. [↑](#footnote-ref-29)
31. Dejusticia, “In historic ruling, Colombian Court protects youth suing the national government for failing to curb deforestation”, 5 April 2018. Available at: [https://www.dejusticia.org/en/en-fallo-historico-corte-suprema-concede-tutela-de-cambio-climatico-y-generaciones-futuras/.](https://www.dejusticia.org/en/en-fallo-historico-corte-suprema-concede-tutela-de-cambio-climatico-y-generaciones-futuras/) IUCN, *“*Colombian Supreme Court Recognizes Rights of the Amazon River Ecosystem”, 20 April 2018. Available at: <https://www.iucn.org/news/world-commission-environmental-law/201804/colombian-supreme-court-recognizes-rights-amazon-river-ecosystem>. [↑](#footnote-ref-30)