

Contribution to the DGD Children's rights and the Environment

Author: Ivana Savić
External PhD Candidate, Leiden University
Email: ivana.savich@gmail.com

Environment, including both natural and man-made environment is a precondition of life. Therefore, the environment is *de facto* one of the “governing agency” of human communities as it shapes, influences and conditions human behaviours. As such the environment can have positive and negative, direct or indirect influence on children's lives. Nonetheless, the environmental harm and degradation severely impacts children's lives and enjoyment of their rights. Direct impact of environmental harm to children's lives and rights could be defined as an impact whereby the changes in children's wellbeing and violation of the rights of the child could be directly attributed to the environmental harm- for example “*more than 50% of premature deaths due to pneumonia among children under 5 are caused by the particulate matter (soot) inhaled from household air pollution.*”¹ Although the indirect impacts are harder to measure, they can, and do have more profound influence. In that regard, the seriousness of the environmental harm is one of the deterrents of the children's wellbeing and children's vulnerability. Factors and conditions that determine the special vulnerability of children in the context of environmental protection and harm are: biological factors and conditions, socio-economic status of children, and culture.

There is a direct correlation between exposure to environmental risks and adverse social, cultural and economic conditions that children are faced with. Most of the challenges with which children are faced with are rooted in inequalities. Especially multiple discriminated children are exposed to serious environmental degradation, risks and hardships. Three groups of the challenges could be identified:

- Serious violation of rights, predominantly right to life, survival, development, right to health, right to education, right to the adequate standard of living and many other rights due to environmental degradation;
- Lack of access to environmental information, participation opportunities in environmental decision making and access to justice in environmental matters;

¹ For more information see: <http://www.who.int/mediacentre/factsheets/fs292/en/>

- Social exclusion and inability to access and use the benefits of the ecosystems.

In addition, one of the main obstacles that both children and the society is face with is that the capacities, competencies and experiences of children for responding to environmental issues are not recognized as relevant. Thus, children, regardless of their age, are not recognized as agents of change in environmental matters although the international community recognized children as the group with the strong interest in environmental matters.² It is important to notice that both children and environment are perceived as objects of protection, which significantly limits children's influence on decision making. Furthermore, even when children make a significant contribution to the advancement and protection of environment, their role in environmental protection and advancement is minimized or it is entirely overlooked. The current institutional framework for participation in environmental and environment-related decision making is organized in a way that it discourages children to participate, and does not address emerging environmental issues relevant to children. Emerging environmental issues that require a special attention are issues of children and climate change, access of children to energy and modern energy services, energy poverty and children and urbanization. Although there have been examples of good practice at the local, national, regional and international level on children's engagement in environmental decision-making, unfortunately in most parts of the world children voices are systematically disregarded and not taken into account in environmental and developmental decision making. This situation does not only lead to the depilation of the natural capital, but also to the depilation of the social capital.

Education for the rights of the child as well as environmental education, both formal and non formal, have a significant role in empowerment of children and environmental protection. Education is one of the main sources of gaining environmental information. Another important aspect of accessing environmental information is through children's active participation in community, as children are the main demographic group that bears the costs of environmental degradation. Children are significantly limited in accessing the information, participation and justice in environmental matters, although this has to be considered in the context of the broad public participation. When it comes to environmental information, information is not easily available, and there are significant challenges in understanding and utilizing the information.

² For example see Rio Principles.

Information can range from making everyday personal choices that protect and advances the environment and the rights to the information related to the development in the community that can impede the human rights and the state of environment, such as for example building of the power plant or the road. Similarly, on one hand opportunities for participation in the environmental decision making is very limited as environmental management is mostly regulated under the economic and investment regime, while on other hand participation mechanisms are complex, technical and expert based. Access to justice for children in environmental matters is of a big concern, although significant differences in accessing the environmental justice among countries could be identified.

The Convention on the Rights of the Child does not recognise the environmental rights of the child or rights of the child relating to environment *per se*, but those rights are derived from other rights recognized in the Convention, such as the right to health, right to education, and the right to adequate standard of living in which provisions relating to the environment, or some aspects of environment are explicitly mentioned. The obligations relating to environment mainly are derived from the right to health due to the fact that the right to adequate environment is necessary to prevent the right to health to be less meaningful or less secure. In addition, the right of the child to environment has the triple legal nature: (1) right to environment as underlying general principle without which other rights of the child could not be fully enjoyed or enjoyed at all; (2) right to environment as autonomous right of the child; (3) right to environment as accessory right, or the right that is attached to other right of the child.

State obligations regarding the rights of the child in relation to a safe, clean, healthy and sustainable environment are both positive and negative obligations. States should ensure enjoyment of a variety of environmental goods, facilities, services and conditions necessary for realization of the right of the child to environment, and all other rights recognized by the CRC. The right of the child to the environment contains freedoms: freedom from environmental degradation, damage and harm, freedom from pollution and activities that adversely affect the environment, or threaten life, survival, development, health, livelihood, well-being or sustainable development. The right also contains entitlements, with the following obligations of the state:

- To provide a system of environmental protection that provides equality of opportunities for all children to enjoy the highest attainable state of environment (and health);

- To prohibit and eliminate discrimination on all grounds and ensure equality to all children in relation to access to environmental services, goods and facilities and the underlying determinants of environment;
- To provide access to justice for all children in environmental matters;
- To provide equality in the access to the natural resources and eco-services, including the benefits of the ecosystems;
- To provide access to modern energy services;
- To provide all children with environmental information in accessible format and opportunities for participation in environmental decision making;
- To provide assistance in the events of natural or human caused catastrophes, especially to children that are environmental refugees or environmental IDPs.

The non-discrimination principle is crucial to the enjoyment of the right of the child to environment. In that regard, all environmental services, goods and facilities must be:

- Available in sufficient quantity within a State;
- Accessible in terms of physical, financial, social and cultural accessibility;
- Acceptable and of good quality;

States have a primary role in addressing the environmental harm, as environmental harm is a result of the activities that are regulated by the state, which includes prevention, minimization and mitigation of the environmental harm. Addressing the environmental harm has mainly been done through the environmental law, but also human rights law- states obligations relevant to protecting children from environmental harm in the long term are stipulated by the CRC, and particularly by the art. 24. When it comes to the trans boundary environmental damage, the specific obligations of the states are subject to different environmental treaties, depending on the type of the environmental damage. However, regardless of the type of the damage, the state where the environmental damage originated has the same obligations towards children outside its territory that are affected by the environmental damage as if they are living in the territory where the environmental damage originated. In addition, in accordance with the CRC, it could be argued that all states have the obligation of cooperation in the environmental matters concerning children. Therefore, the increased interests and efforts in addressing the environmental protection within the children's rights policies can be identified, however there are still significant capacity gaps in that regard. In addition, environmental protection through the human rights instruments, especially the rights of the child, has shown to be effective.

As business sector plays a crucial role in addressing the environmental harm that interferes with the enjoyment of the children's rights, the states have the following obligations in regards to the impact of business sector on environment and children's rights:

- To ensure that the business regulation doesn't have adverse impact on the rights of the child and environment;
- To ensure business's sector compliance with the environmental and the rights of the child regulation;
- To provide redress and remedies in the situations of business adverse impact on the children's rights and environment.

As for the different types of impact that business could have on the environment and children's rights, the following types of impact could be identified:

- 1) **Direct and indirect impact**- the distinction is made based on the relationship between the cause and effect of business activities to the environment and the rights of the child;
- 2) **Cumulative impact**;
- 3) **Impact that contributes to the strong sustainability and the impact that contributes to the weak sustainability**- the distinction is made based upon the outcomes of the business activities on the environment and the respect, protection and advancement of the rights of the child, including economic, social and cultural impact of the business activities on children. Within the business activities that contribute to the environmental harm and thus the rights of the child violations, the following types of environmental harms could be identified:
 - a. Indoor and Outdoor Air pollution;
 - b. Water pollution;
 - c. Land and soil pollution and degradation;
 - d. Marine and coastal pollution;
 - e. Noise pollution;
 - f. Light pollution;
 - g. Thermal pollution;
 - h. Visual pollution;
 - i. Radiation;
 - j. Extinction of the species;

There is a correlation between the environmental harm and the rights of the child violations, especially the right to health, but also all other rights recognized by the Convention. On other hand, business activities have economic, social and cultural impact on children's lives. If such impact is negative, it can lead to the further degradation of the environment. However, it is important to note that the business activities have more impact, both in terms of the quantity and quality, on the violations of the rights of the child and environmental degradation, than that is the case with the impact of the rights of the child and environment to the business activities.

- 4) **Predictable and unpredictable impact**- this is based on the predictability of the outcomes of business activities on the environment and the rights of the child;

- 5) **Local, national, regional, international impact**- the distinction is based on the geographical influence of business activities.
- 6) **Temporary and permanent impact**
- 7) **Short, medium or long term impact.**

Based on the review of the corporate policies and economic regimes, it can be concluded that human rights impact assessment, and especially children's rights impact assessment is still in the beginning, and that it requires further research. Nonetheless it should be noted that the corporate responsibility to respect the children's rights requires from business to integrate children rights impact assessment with the environmental impact assessment. This could be achieved through the development and adoption of the Environmental and Rights of the Child Standards that would aim at mainstreaming the environmental sustainability and the rights of the child in corporate activities, in order to enhance positive social and environmental opportunities, and ensure that risk and adverse impacts are avoided, minimized or mitigated.

In order to ensure and advance the implementation of the child rights obligations relating to environment, the following recommendations are given:

- Adoption of the General Comment on the Environment and the Rights of the Child;
- Adoption of the Forth Optional Protocol to the Convention on the Rights of the Child on Environmental Rights of the Child;
- Recognition of the adequate environment as one of the basic principles of the CRC;
- Development of the methodology for short, medium and long term the rights of the child impact assessment of social, environmental and economic law, policy and activities;
- Development of the methodology for the rights of the child impact assessment of the environmental decision making and children's rights mainstreaming in the all relevant environmental policy fields;
- Development of the environmental rights of the child indicators.