

THE RIGHT TO A HEALTHY ENVIRONMENT

Comparative Approaches to Support Children's Participation and Access to Justice

April 2021

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Table of Contents

EXECUTIVE SUMMARY	1
RECOMMENDATIONS.....	2
PART I. REALISING CHILDREN'S RIGHT TO A HEALTHY ENVIRONMENT	4
<i>A. Environmental Threats to Children's Right to a Healthy Environment.....</i>	<i>4</i>
<i>B. Hard Law Frameworks Connecting Human Rights and the Environment</i>	<i>7</i>
<i>C. International Soft Law Addressing Business Responsibility.....</i>	<i>9</i>
<i>D. The Precautionary Approach: A Healthy Environment for the Future.....</i>	<i>12</i>
<i>E. The Empowerment of Children as Agents of Change.....</i>	<i>14</i>
PART II. PARTICIPATION OF CHILDREN IN ENVIRONMENTAL ISSUES	15
<i>A. Children's Right to Participation</i>	<i>15</i>
<i>B. Participation and Children's Right to Education</i>	<i>17</i>
<i>C. Participation and Children's Right to be Heard.....</i>	<i>20</i>
<i>D. Participation and Children's Right to Information</i>	<i>24</i>
PART III. ENHANCING ACCESS TO JUSTICE IN ENVIRONMENTAL ISSUES ...	25
<i>A. Barriers to Justice for Children and Young People.....</i>	<i>26</i>
<i>B. Comparative Approaches to Access to Environmental Justice.....</i>	<i>30</i>
<i>C. Climate Activism and Non-Judicial Mechanisms</i>	<i>33</i>
CONCLUSION.....	35
APPENDIX I	36
APPENDIX II	38

ABBREVIATIONS

CEDAW	Committee on the Elimination of Discrimination against Women
CRBP	Children's Rights and Business Principles
CRC	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRWIAs	Children's Rights and Wellbeing Impact Assessments
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIAs	Environmental impact assessments
GHG	Greenhouse gases
HRDD	Human rights due diligence
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MNCs	Multinational corporations
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
OECD	Organisation of Economic Co-operation and Development
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNGC	United Nations Global Compact
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNICEF	United Nations International Children's Emergency Fund
WHO	World Health Organization

EXECUTIVE SUMMARY

Following Scotland's unanimous passing of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill,¹ this report details further opportunities for supporting children's rights in Scotland, specifically in terms of the right to a healthy environment. As enshrined by the UN Convention on the Rights of the Child (UNCRC),² realising the right to a healthy environment means that children and young people are thriving, safe, healthy, and developing in order to fulfil their greatest potential. However, insufficient governmental response to rampant environmental destruction (e.g., accelerated global climate change, unprecedented biodiversity loss, rampant natural resource exploitation, significant exposure to toxins and waste, and extensive air, water, and soil pollution) gravely impacts the realisation of human rights, especially for children.³

As addressed in Part I, children are uniquely vulnerable to the impacts of environmental harm because their bodies and minds are continuously evolving, and their agency is often overlooked and dismissed by decision-makers. An extensive international framework provides binding and non-binding obligations for both States and private actors to protect the environment and account for children's rights and perspectives in decision-making, but significant barriers persist for children in realising their environmental and human rights.

A comparative study of States in the translation and implementation of children's right to a healthy environment emphasises the need to enhance children's participation – including access to justice – in environmental issues. As addressed in Part II, environmental education has been used by States to promote participation and the right to be heard is gaining importance as children are recognised as critical agents of change. The ability of children to pursue effective remedies for

¹ United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill [as passed] (16 March 2021).

² Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC).

³ This brief also aims to emphasise the inextricable link between environmental rights and human rights: see further, Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016).

environmental harm is still in its developmental stages and, as examined in Part III, systemic challenges impede the judicial process. Some jurisprudence, however, has provided ground-breaking decisions that affirm the ability of children to access justice when their right to a healthy environment has been threatened by climate change.

This report offers broad recommendations on what the incorporation of the right to a healthy environment could look like in terms of legislative and procedural provisions, and national practice in Scotland. The ultimate purpose is to inspire Together's Members to imagine the possibilities for enhancing their collaboration with national institutions for better realisation of children's rights.

RECOMMENDATIONS

This report identifies opportunities in which Scotland can take action to ensure a healthy environment for all citizens – adults, children, and future generations alike. Through comprehensive legal and policy analysis of global experience and guidance, the key recommendations are summarised as follows:

- i. Scotland should follow through with its acceptance of the recommendations made by the National Taskforce for Human Rights and **adopt a stand-alone and justiciable right to a healthy environment**.
- ii. Scotland should **provide legal standing for children** as claimants in environmental cases. Scotland should also **provide for public interest litigation** such that cases relating to environmental harms and climate change are able to be brought before Scottish courts by Non-Governmental Organizations (NGOs).
- iii. Scotland should **ensure appropriate remedies are available** for suits involving the environment and climate change.
- iv. Scotland should **ensure children are proactively involved in decision-making** on matters that concern the environment, namely through their inclusion in the parliamentary process and environmental impact assessments (EIAs). Similarly,

the environment should be a factor considered within Scotland's Children's Rights and Wellbeing Impact Assessments (CRWIAs).

- v. In all policy and regulatory decision-making, Scotland should **adopt the precautionary approach**, and should specifically incorporate a child's rights perspective when mitigating or preventing possible threats to the environment.
- vi. The Scottish government should be **transparent on any decisions made that affect or concern the environment**, specifically making information on such decisions publicly available and accessible to children through age-appropriate language.
- vii. Scotland should ensure that **the Curriculum for Excellence encourages respect for the environment and an understanding of the natural world**. Education must also address the reality of climate change and the environmental threats experienced within our current age, both nationally and internationally.
- viii. Scotland should **recognise children and young people as emancipated actors** who are able to develop their knowledge, form their own opinions, and make decisions relating to the environment in which they grow up. Accordingly, age-appropriate resources should be made available to children on how they can participate in decision-making, access justice, and actualise their legal rights.
- ix. Scotland should **promote and protect children's right of expression**, including the freedom to protest and campaign on matters that relate to the environment.
- x. Scotland should **hold private actors accountable for any environmental harm caused and their human rights due diligence responsibilities**. This means tightening regulations to effectively monitor and ensure that businesses identify, prevent, and mitigate their impacts on the environment. Businesses should furthermore incorporate a children's rights lens when fulfilling their obligations to respect human rights and comply with environmental rights and regulations in their operations in the UK and abroad.

PART I. REALISING CHILDREN'S RIGHT TO A HEALTHY ENVIRONMENT

'[N]o group is more vulnerable to environmental harm than children'

- Special Rapporteur on Human Rights and the Environment⁴

A. Environmental Threats to Children's Right to a Healthy Environment

The full realisation and enjoyment of fundamental human rights ultimately hinges on a healthy environment.⁵ A healthy environment provides substantial resources, services, and protection to all individuals and communities by promoting one's ability to grow and develop to the fullest extent possible.⁶ Lack of adequate access to a healthy environment renders certain populations vulnerable and susceptible to adverse consequences of environmental harm, thereby creating barriers to the realisation and exercise of their human rights.⁷ Whilst all populations acutely experience the impact of environmental harms, children are uniquely vulnerable as their minds, bodies, knowledge, and agency (i.e., status in society) are continuously evolving.⁸ Drastic temperature changes combined with diminished air, water, and nutritional quality have severe, far-reaching, and irreversible implications for children's long-term physical and mental health, development, and overall well-being.⁹

⁴ Human Rights Council, *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/37/58, para 15.

⁵ Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* (19 July 2018) UN Doc A/HRC/73/188, para 13.

⁶ *ibid*; 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)' (17 April 2013) UN Doc CRC/C/GC/15, para 2; Human Rights Council, *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 (Tuncak Report), para 27; Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* (19 January 2017) UN Doc A/HRC/34/49 (Knox Report), para 5.

⁷ Human Rights Council, *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 (Knox Report), Framework Principle 8.

⁸ 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' (17 April 2013) UN Doc CRC/C/GC/16; United Nations General Assembly, 'A World Fit for Children' (10 May 2002) UN Doc A/RES/S-27/2, para 7.

⁹ Young children in particular experience climate change-related stress due to less developed physiology and immune systems: Human Rights Council, *Analytical Study on the Relationship Between Climate Change and the Full and Effective Enjoyment of the Rights of the Child* (4 May

Children experience unique environmental harms¹⁰ in comparison to adults, 'have little or no control over the environmental threats that they face, [and] lack the knowledge and ability to protect themselves.'¹¹ This creates a dependence on their parents' and/or guardians' awareness in order to safeguard against their enhanced vulnerability.¹²

Fig. 1: Persons in possible situations of increased vulnerability

- Children
- Women
- Persons with disabilities
- Ethnic, racial or other minorities
- Persons living in poverty
- Displaced persons as a result of environmental harm
- Members of Indigenous Peoples or traditional communities

Of the 5.9 million deaths of children under 5 years old in 2015, the World Health Organisation (WHO) estimated that more than 1.5 million deaths could have been prevented 'through the reduction of environmental risks such as air pollution, unsafe water, sanitation and inadequate hygiene or chemicals.'¹³ Moreover, no greater threat exists to the world's 2.2 billion children – who make up a third of the global

2017) UN Doc A/HRC/35/13. Exposure to pollution and other toxic chemicals can have irreversible consequences on the child's physiological and mental development, contributing to increased rates of cancer, disabilities, respiratory and cardiovascular diseases, cognitive disorders, hormonal dysfunctions and other health implications manifesting later in the child's life: Landrigan, P.J. & Goldman, L.R., 'Children's Vulnerability to Toxic Chemicals: A Challenge and Opportunity to Strengthen Health and Environmental Policy' (2011) 30(5) *Health Affairs* 842; Human Rights Council, *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 (Tuncak Report), paras 4, 5, 29, 41; The Lancet Commission, *A Future for the World's Children? A WHO-UNICEF-Lancet Commission* (2020).

¹⁰ This includes involuntary exposure during foetal development, child-specific behaviours such as breastfeeding and biting, and movement across hazardous zones such as crawling on the floor: Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016).

¹¹ Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* (19 July 2018) UN Doc A/HRC/73/188, para 24(b).

¹² Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016), 23.

¹³ Chief among the causes of death for children is air pollution, which the WHO reports 'causes approximately 600 000 deaths in children under five years annually,' and diarrhoeal diseases caused by unsafe and inadequate sanitation practices, which cause 'about 10% of all deaths in children under five years': World Health Organization, *Don't Pollute My Future! The Impact of the Environment on Children's Health* (2017), 1.

population – and to future generations than the climate crisis,¹⁴ where greenhouse gas (GHG) emissions are the key instigator of accelerated climate change. As a principal generator of global GHG emissions,¹⁵ business activities gravely impact the environment children live and grow up in and, thus, represent the most significant and constant challenge to a healthy environment.¹⁶ Children who are in “vulnerable situations” are at greatest risk, particularly those who are disabled or are from indigenous, low-income, or otherwise excluded communities.¹⁷ These children are disproportionately affected¹⁸ by exploitation and environmental destruction from business activities, most notably when vulnerabilities intersect among multiple dimensions (**Fig. 1** on the previous page).¹⁹

The complex cooperation between States, businesses, and communities is critical for children’s access to the right to a healthy environment. Despite extensive international legal protection and national incorporation, the severity and enormity of environmental degradation from business activities ultimately challenges the ability of States to safeguard children’s rights and meet international obligations. This includes extended obligations of States for *all* children within their jurisdiction, even those beyond their territorial borders.²⁰ Consequently, States must fully leverage a

¹⁴ United Nations International Children’s Emergency Fund, *The State of the World’s Children 2014: Every Child Counts* (2014).

¹⁵ Collectively, the world’s largest public firms (top 3,000) cause more than a trillion dollars of environmental damage a year according to the United Nations Environment Programme. The distribution of destruction is heavily concentrated with more than 70% of emissions caused by only 100 companies. Furthermore, only 25 corporate and state producing entities account for 51% of global industrial emissions: Griffin, P, *The Carbon Majors Database: CDP Carbon Majors Report 2017* (Climate Accountability Institute 2017).

¹⁶ Namely through, *inter alia*, the (over)use of natural resources including extraction, causing water shortages, and deforestation; as well as through the production of ‘by-products’ including the use, release, and disposal of hazardous and toxic waste: Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children’s Rights and the Environment* (2016).

¹⁷ Human Rights Council, *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.

¹⁸ Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka* (10 February 2017) UN Doc A/HRC/34/20; Atapattu, S, ‘The Right to a Healthy Environment and Climate Change: Mismatch or Harmony?’ in Knox, J. & Pejan, R. (eds.), *The Human Right to a Healthy Environment* (Cambridge University Press 2018) 252-268.

¹⁹ For example, disabled children who live in poverty: Office of the United Nations High Commissioner for Human Rights, *Manual on Human Rights Monitoring: Chapter 15 Integrating Gender into Human Rights Monitoring* (2011).

²⁰ With the increasingly global scale and complexity of the value chains of multinational corporations (MNCs) - which are often located in numerous jurisdictions, with various subsidiaries, and joint ventures - business impacts are local, national and global in nature; therefore, the CRC does not limit a State’s jurisdiction territorially. This requires States to engage in *international cooperation*, and with

diverse array of both hard and soft law instruments to hold businesses accountable through wide-ranging and effective oversight and regulation. As illustrated later in this report, States must specifically enhance participation and access to justice to ultimately guarantee that children and young people are seen and heard.

B. Hard Law Frameworks Connecting Human Rights and the Environment

Although international human rights law does not expressly recognise a substantive right to a healthy environment, an *unhealthy* environment directly threatens several fundamental rights including, *inter alia*, the right to life,²¹ the right to health,²² the right to water,²³ and the right to food.²⁴ Key sources of international environmental

the nearly universally ratification of the Convention, interaction is more critical between host and home States of business enterprises in order to fulfil both States' obligations to protect children's rights to a healthy environment: Committee on the Rights of the Child, 'General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin' (1 September 2005) UN Doc CRC/GC/2005/6. See also *Future Generations v Ministry of the Environment and Others*, Supreme Court of Colombia, (2018) STC4360-2018, which drew on the "principle of solidarity" in its Consideration 11.3, in order to protect the petitioners, next generations, as well as other people that live in the Amazonas and all people of the planet, including all living creatures.

²¹ The right to life is affirmed in Universal Declaration of Human Rights (adopted 10 December 1948) UN Doc A/RES/217A (III) (UDHR) art 3; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 6(1); UNCRC art 6(1). The right to life is also recognised within each of the regional regimes: in Article 4(1) of the American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OAS Treaty Series No 36 (Pact of San Jose); Article 4 of the African Charter on Human and Peoples' Rights (Banjul Charter) (adopted 27 June 1981, entered into force 21 October 1986) (1982) CAB/LEG/67/3 rev.5 21 ILM 58; and Article 2(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 (ECHR).

²² The right to health is guaranteed by Article 25 of the UDHR, Article 12 of the ICCPR, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 12; Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD) art 25; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 12.

²³ The right to water is expressly established in CEDAW, the CRC and the CRPD, but for general application is derived from the exercise of the rights to health, to an adequate standard of living, to adequate housing, and to food as established in the UDHR, ICCPR, and ICESCR. It was finally recognised as a human right in the United Nations General Assembly, 'The Human Right to Water and Sanitation' (adopted 28 July 2010, entered into force 3 August 2010) UN Doc A/RES/64/292; Human Rights Council, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Preliminary Report* (24 December 2012) UN Doc A/HRC/22/43.

²⁴ The right to food is recognised in ICESCR; CEDAW; CRPD; and the Food Aid Convention of 1999 (adopted 13 April 1999, entered into force 1 July 1999) 2073 UNTS 135.

law, such as the Stockholm Declaration²⁵ and the Rio Declaration,²⁶ also connect environmental protection with human rights, namely the right to life,²⁷ while the preamble to the Aarhus Convention ‘recogniz[es] that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself.’²⁸ The relationship between children’s rights and the environment has been notably recognised by international human right bodies²⁹ and jurisprudence.³⁰ Significantly, the UNCRC is one of the few human rights instruments explicitly imposing positive obligations on States to protect the environment.³¹

²⁵ Declaration of the United Nations Conference on the Human Environment. *Report of the United Nations Conference on the Environment* (Stockholm, 5-16 June 1972) (15 December 1972) A/CONF.48/14/Rev.1 (Stockholm Declaration).

²⁶ Rio Declaration on Environment and Development: Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992) (12 August 1992) A/CONF.151/26 (Vol. I) (Rio Declaration).

²⁷ Proclamation 1 of the Stockholm Declaration states: ‘Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself.’ Principle 1, meanwhile, affirms: ‘Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.’ Similarly, Principle 1 of the Rio Declaration states: ‘Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.’ While these two sources are soft law (and thus not legally binding), they are nonetheless critical to the international environmental law framework.

²⁸ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (Aarhus Convention).

²⁹ Human Rights Council, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Preliminary Report* (24 December 2012) UN Doc A/HRC/22/43; Human Rights Council, *A healthy Biosphere and the Right to a Healthy Environment* (15 July 2020) UN Doc A/HRC/75/161, para 51; Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children’s Rights and the Environment* (2016); 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)’ (17 April 2013) UN Doc CRC/C/GC/15.

³⁰ See e.g., *Future Generations v Ministry of the Environment and Others*, Supreme Court of Colombia, (2018) STC4360-2018, Consideration 2, where the Supreme Court of Colombia assessed the relationship between the environment and water, dignity and health. See also *The Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*, Comm. No. 155/96 (2001), African Commission on Human and Peoples’ Rights, para 52, where the African Commission on Human and Peoples’ Rights linked the right to a clean and healthy environment with economic and social rights.

³¹ Specifically, Article 24(2) of the CRC provides that ‘States parties shall pursue full implementation of [the right of the child to the enjoyment of the highest attainable standard of health] and, in particular, shall take appropriate measures [...] (c) To combat disease and malnutrition...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’, while Article 29(1) provides that ‘the education of the child shall be directed to: [...] (e) The development of respect for the natural environment.’

In accordance with this international framework, States are obliged to respect, protect, and fulfil human rights in the environmental context.³² These obligations are legally ensured in more than 80% UN Member States³³ via national legislation, jurisprudence, and regional treaties.³⁴ Recently, the Scottish government took the first step towards recognising the importance of a healthy environment by accepting the recommendations of the National Taskforce for Human Rights, which expressly recommended the adoption of a right to a healthy environment within Scottish law.³⁵ This action, alongside the Scottish parliament's recent incorporation of the UNCRC, offers the perfect opportunity for children's right to a healthy environment to be incorporated into national law.

C. International Soft Law Addressing Business Responsibility

States have a positive obligation (i.e., take necessary measures to safeguard a right) to implement adequate legal frameworks that regulate business activities,³⁶ enforce

³² Committee on the Rights of the Child, 'General Comment No. 5 (2003): General Measures on the Implementation of the Rights of the Child' (27 November 2003) UN Doc CRC/GC/2003/5; Human Rights Council, *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 (Knox Report). Similarly, States also have the obligation to prevent transboundary environmental harm, according to the "No Harm" principle. The "No Harm" principle was first articulated in the *Trail Smelter Arbitration*, where it was concluded that 'under the principle of international law ... no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the property of persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence': *United States v Canada (Trail Smelter Arbitration)* (1938 and 1941), 3 RIAA 1905. The principle has since been incorporated into customary international law and soft law: see e.g., Rio Declaration, Principle 2.

³³ The right to a healthy environment is granted constitutional protection in 110 States: Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Right to a Healthy Environment: Good Practices* (30 December 2019) UN Doc A/HRC/43/53, para 10. This is particularly salient because the constitution is the highest and strongest law in a domestic legal system, is a crucial normative and cultural instrument expressing the values of a society, and because international human rights law obligations must be translated into domestic law for enforcement.

³⁴ *ibid*, para 11. A healthy environment is guaranteed within all three regional human rights frameworks: see Article 11 of Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (adopted 17 November 1988, entered into force 16 November 1999) OAS Treaty Series No 69 (San Salvador Protocol); Article 24 of the African Charter on Human and Peoples' Rights; and Article 7 of the European Social Charter (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

³⁵ National Taskforce for Human Rights, *Leadership Report* (Scottish Government 2021). The Scottish government's acceptance of the recommendations made by the Taskforce was announced on 12 March 2021: see 'New Human Rights Bill' Scottish Government (12 March 2021).

³⁶ States have a duty to 'protect' human rights against abuse by third parties (e.g., businesses), with appropriate policies, legislation, regulation and adjudication: Office of the United Nations High

compliance, and seek remedies in the case of breaches.³⁷ For example, States should effectively monitor businesses by identifying, preventing, and mitigating their impacts on the environment, specifically from a children's rights perspective.³⁸ Similarly, the UNCRC requires States to realise children's right to the highest attainable standard of health³⁹ by focusing on *prevention*⁴⁰ of health impacts and mediating exposure to environmental harms from business activities and operations.⁴¹

International hard law does not impose direct human rights obligations on the private sector, yet the progressive development of critical soft law instruments⁴² clearly outline business responsibilities for respecting human rights. The first core soft law instrument, the UN Guiding Principles on Business and Human Rights (UNGPs),⁴³

Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (16 June 2011) UN Doc HR/PUB/11/04.

³⁷ States should provide access to effective and appropriate judicial and non-judicial grievance mechanisms for human rights abuses from business activity: see Human Rights Council, *Protect, Respect and Remedy: A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie* (7 April 2008) UN Doc A/HRC/8/5 (UN Guiding Principles on Business and Human Rights).

³⁸ United Nations International Children's Emergency Fund, The Global Compact, and Save the Children, *Children's Rights and Business Principles* (2011).

³⁹ For example, children's right to a healthy environment in terms of the right to life directly engages two of the four principles on which the CRC is founded: the principle of survival and development, and the principle of the best interests of the child. The principle of survival and development of the child is codified in Article 6(2), alongside the right to life guaranteed in Article 6(1). The principle of the best interests of the child, meanwhile, runs throughout the CRC, but is notably codified in Article 3(1), where it stated that, '[i]n 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.'

⁴⁰ 'Preventive action, including adequately enforced laws and monitoring, should lie at the heart of governments' protection efforts': Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016), 9.

⁴¹ *ibid.*

⁴² Through the establishment of stricter regulations, reporting requirements, and even increased risks of potential legal claims: McCorquedale, R. et al, 'Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises' (2017) 2(2) *Business and Human Rights Journal* 195.

⁴³ The UNGPs were developed through a lengthy and thorough consultative process among companies, activists, governments, and other stakeholders, and were based on an internationally recognised mix of hard and soft instruments that are comprised of both human rights in the International Bill of Human Rights (e.g., UDHR, ICESCR, and ICCPR) and core labour rights (e.g., 1998 ILO Declaration, and ILO Fundamental Conventions). To date, they are the most authoritative international statement regarding the responsibilities of business with respect to human rights. The three-pillar UNGPs reaffirm the State ("protect") and Business ("respect") duties and responsibilities paradigm: Human Rights Council, *Protect, Respect and Remedy: A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the Issue of Human*

did not prioritise or clarify specific responsibilities relating to children's rights.⁴⁴ The second core soft law instrument, The Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises,⁴⁵ expanded the human rights due diligence (HRDD) process in UNGP 15(d)⁴⁶ in a way that better addressed the right to a healthy environment.⁴⁷ However, it is the third core instrument in business and human rights, the UN Global Compact,⁴⁸ which first connected several of its ten principles specifically to children's rights.⁴⁹

The lack of elaboration on the obligations and responsibilities of businesses led to two crucial developments in soft law, reminding both States and non-State actors that the best interests of the child must be met. General Comment No. 16⁵⁰ by the Committee on the Rights of the Child (CRC) emphasises State obligations to protect children from harmful business impacts, while the Children's Rights and Business

Rights and Transnational Corporations and Other Business Enterprises, John Ruggie (7 April 2008) UN Doc A/HRC/8/5 (UN Guiding Principles on Business and Human Rights).

⁴⁴ Furthermore, business impacts on children's rights are much broader than the issue of child labour. Collins, T.M., 'The Relationship Between Children's Rights and Business' (2014) 18(6) *The International Journal of Human Rights* 582: Although children appear fleetingly and only in the subsequently published Commentary to the UNGP, States are called upon to advise the private sector to consider children along with other groups in vulnerable situations. Businesses must incorporate 'additional standards' concerning the rights of particularly vulnerable groups or populations. However, there is no reference to international environmental treaties as a part of these additional standards: Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (16 June 2011) UN Doc HR/PUB/11/04.

⁴⁵ Organisation of Economic Co-operation and Development, *Guidelines for Multinational Enterprises* (2011) (OECD Guidelines).

⁴⁶ The OECD Guidelines, however, treat the environment as distinct from human rights by placing them in separate chapters (i.e., human rights in Chapter IV, and Environment in Chapter VI). The "Environment" chapter reflects objectives included in Agenda 21 of the Rio Declaration and the Aarhus Convention: see further OECD Guidelines.

⁴⁷ The 2011 revised version of the OECD Guidelines incorporated and expanded the application of the UNGP HRDD process to the environment. It is also the most comprehensive international standard on Responsible Business Conduct (RBC) which entails proactive compliance with all laws respecting human rights, environmental protection, labour relations and financial accountability, even when operating in jurisdictions where these are poorly enforced: *ibid*.

⁴⁸ The UN Global Compact is a voluntary non-binding pact with direct participation of businesses and large reach which incorporates human rights and the environment among its general ten principles. Like the UNGPs, the UNGC is also derived from the core of human rights (e.g., UDHR, and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work). There are currently 12,000+ signatories in over 160 countries: see further: 'The Ten Principles' UN Global Compact' (nd.).

⁴⁹ Children's rights are tied to UNGC Principles 1, 2, and 5, which are two very general human rights principles and one on the abolition of child labour: Kofoed, J., 'Children's Rights' UN Global Compact (nd.).

⁵⁰ 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' (17 April 2013) UN Doc CRC/C/GC/16.

Principles (CRBP)⁵¹ is a voluntary guidance tool that outlines positive “obligations” on businesses to meaningfully engage children. General Comment No. 16 also creates a duty on States to require businesses to further elaborate the HRDD process with a specific child-rights focused lens.⁵² The CRBP is the first instrument to combine all guidance on business and children’s rights into a single strategic framework with an explicit articulation of the ways in which corporate operations and networks impact various areas of children’s rights.⁵³ At a minimum, businesses must ensure that all corporate policies and processes comply with the obligations outlined in the UNGP, which is also endorsed by the United Nations Human Rights Council.⁵⁴

D. The Precautionary Approach: A Healthy Environment for the Future

The precautionary approach is a guiding principle of environmental law which advocates for caution in the face of scientific uncertainty.⁵⁵ It specifically holds that, in situations where serious or irreversible threats to the environment or human health are possible, government policy- and decision-makers cannot rely on uncertainty to

⁵¹ Developed collaboratively by Save the Children, UNICEF and the UN Global Compact, with consultation with children, business, trade unions, national human rights institutions, civil society, academics, investors and governments. The content of the CRBP clearly reflects the Protect, Respect and Remedy framework of the UNGPs with the first principle advocating for policy commitment, human rights due diligence and remediation vis-à-vis children. See: United Nations International Children's Emergency Fund, The Global Compact, and Save the Children. *Children's Rights and Business Principles* (2011).

⁵² The UNGPs do not specifically reference children’s rights beyond child labour and hazardous work, nor to environmental impacts as a part of the HRDD process. Environmental impact assessments are mentioned once, only as a *separate* activity that businesses can add the HRDD process to: Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (16 June 2011) UN Doc HR/PUB/11/04, 20. Additionally, there is only one reference to exposure to toxic chemicals as an example of negative impact violating the right to life: ‘United Nations Guiding Principles Reporting Framework’ UN Guiding Principles Reporting Framework (nd.).

⁵³ The CRBP do not engender new legal obligations as the various principles are already enshrined in international agreements such as the CRC (and its Optional Protocols) and the ILO Core Conventions: O'Neill. K.M., 'Seen and Heard? Children's Participation Rights and Corporate Responsibility' (2014) 1(1) Canadian Journal of Children's Rights/Revue canadienne des droits des enfants 137.

⁵⁴ United Nations International Children's Emergency Fund, The Global Compact, and Save the Children, *Children's Rights and Business Principles* (2011).

⁵⁵ The precautionary approach is set out in Principle 15 of the Rio Declaration: ‘In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.’

forgo proactive or preventative actions.⁵⁶ While the precautionary approach's status within customary international law is still evolving,⁵⁷ it has been incorporated into several international conventions,⁵⁸ regional frameworks,⁵⁹ soft law,⁶⁰ and domestic laws⁶¹ across the world.

The use of the precautionary approach by States when formulating environmental policies and regulations is essential because it ensures steps are taken in the present to prevent future environmental harm. This approach is especially appropriate for protecting children's right to a healthy environment because the science concerning environmental impacts on children is often more complex, less researched, and therefore more uncertain compared to adults.⁶² As such, it is essential for States to apply the precautionary approach with a child's right perspective to ensure a healthy environment for the future. Children's participation in

⁵⁶ In practice, the approach is used as a procedural tool for damage mitigation, requiring that when a serious and irreversible threat may occur, combined with a lack of scientific knowledge about cause-and-effect or certainty that such a threat will occur, specific action (such as preventative measures) must be taken. The precautionary principle has also been established as a litigation tool within the common law. See the 3-step framework for determining whether and how the principle applies to a particular case, as set out in *Telstra v Hornsby Shire Council* (2006) NSWLEC 133: (1) In deciding whether the principle applies, the applicant must establish two conditions precedent: (i) the existence of a threat or serious or irreversible environmental damage, and (ii) the existence of scientific uncertainty regarding the environmental damage; (2) If these conditions are satisfied, the precautionary principle is triggered, and the burden of proof shifts to the proponent to show that the threat of serious/irreversible environmental damage does not, in fact, exist, or is negligible; (3) Where the proponent cannot show that the threats does not exist, the government decision-maker must assume that serious/irreversible damage will occur, and must respond in a manner that is proportional to the threat.

⁵⁷ See Max Planck Encyclopedia of Public International Law, 'Precautionary Approach/Principle' (March 2014), paras 16-21.

⁵⁸ See e.g., Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3; United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC) art 3(3).

⁵⁹ The principle is enshrined in the Article 191(2) of the Treaty on the Functioning of the European Union (2012) OJ C C326/49). In 2000, the EU released a communication to clarify guidelines on the principle's application: see 'Communication from the Commission on the Precautionary Principle' Euro-Lex (nd.).

⁶⁰ Notably, the precautionary principle is incorporated into the UNGC, thereby embedding the approach within business responsibility to the environment. See Principle 7: 'Businesses should support a precautionary approach to environmental challenges.'

⁶¹ See e.g., in France, the principle is enshrined in the Constitution through Article 5 of the 2005 Charter for the Environment: see Loi constitutionnelle n 2005-205 du 1er mars 2005 relative à la Charte de l'environnement [France], 2 March 2005.

⁶² World Health Organization, 'Dealing with Uncertainty – How Can the Precautionary Principle Help Protect the Future of our Children?' in Martuzzi, M. & Tickner J.A. (eds.), *The Precautionary Principle: Protecting Public Health, The Environment and the Future of our Children* (World Health Organization Europe 2004) 15-30.

procedures such as EIAs is critical to ensure their perspective and rights are appropriately considered.

E. The Empowerment of Children as Agents of Change

With a broad hard and soft law framework, international actors have acknowledged the importance of a children's perspective regarding the right to a healthy environment. However, children and young people are amongst the least empowered to express themselves, obtain information, and access justice when their rights have been violated.⁶³ The differential risks and wider discrimination of children is routinely ignored in relevant policy matters relating to the environment. Prioritisation of children in State policies and business operations in regard to a healthy environment should not be limited by the view that they are vulnerable.⁶⁴ This "protective paradigm" has often hindered recognition of the competencies of children, hampered their capacity and resilience to protect themselves from environmental harm, and obstructed their participation in environmental matters.⁶⁵ For these reasons, children's participation rights should be clearly identified and guaranteed by States, both in relation to their own obligations in the matter, and to the obligations of non-State actors.⁶⁶ The subsequent review of comparative practices offers guidance in empowering children as agents of change.⁶⁷

⁶³ Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016).

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ In particular, a child's rights approach to environmental harm reframes the "charity" debate by emphasising State responsibility to fulfil obligations, which includes effective regulation of the private sector: see United Nations International Children's Emergency Fund, *A Brighter Tomorrow: Climate Change, Child and Intergenerational Justice* (2010).

⁶⁷ Ideally, children's participation should be guaranteed at the constitutional level, as for example, the Constitution of Bolivia, which establishes a separate section in its Constitution to the "Rights of Children, Adolescents and Youth" and in its Article 59(V), which guarantees the active participation of youth in '[...] productive, political, social, economic and cultural development': Bolivia (Plurinational State of)'s Constitution, 07 February 2009.

PART II. PARTICIPATION OF CHILDREN IN ENVIRONMENTAL ISSUES

‘Children and young men and women are critical agents of change’

- 2030 Agenda for Sustainable Development ⁶⁸

A. Children’s Right to Participation

A central norm within the international human rights framework, the right to participation and has been recognised by the UDHR and codified by the ICCPR⁶⁹ and the UNCRC. Resonating with the basic principles of the UNCRC,⁷⁰ effective participation in relation to environmental issues requires, at minimum, seven key elements (**Fig. 2**).⁷¹

The right to participation is particularly significant for children, who are traditionally represented as a vulnerable group to be protected⁷² rather than empowered to express their environmental concerns and engage in decision-making with policy-makers.

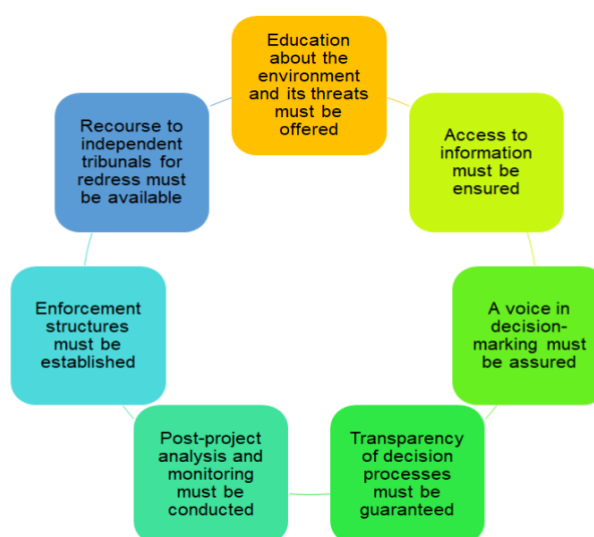


Fig. 2: Seven key elements for effective environmental participation

While the UNCRC represents children as a group in need of protection, it also recognises them as rights-holders with the capacity to exercise their rights and be

⁶⁸ Transforming our World: The 2030 Agenda for Sustainable Development (21 October 2015) Doc UN/RES/70/1, para 51. Girls were denominated ‘agents of change’ in the ‘Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination Against Women/ general comment No. 18 of the Committee on the Rights of the Child on harmful practices’ (14 November 2014) UN Doc CEDAW/C/GC/31-CRC/C/GC/18, para 62.

⁶⁹ See Article 21 of the UDHR; Article 25(a) of the ICCPR. Also see the Aarhus Convention, which guarantees the right to participation in relation to environmental issues.

⁷⁰ Article 2 of the UNCRC: Right to non-discrimination; Article 3 of the UNCRC: Best interest of the child; Article 6 of the UNCRC: Right to survival and development; Article 12 of the UNCRC: Right to be heard.

⁷¹ Popovic, N.A.F., ‘The Right to Participate in Decisions That Affect the Environment’ (1993) 10(2) Pace Environmental Law Review 683.

⁷² Primarily due to their lack of emancipation, disabling terminology used throughout environmental law commonly represents children as a vulnerable group rather than enabling them to be rights-holders with agency. See Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children’s Rights and the Environment* (2016).

active participants in matters that affect them.⁷³ This is reinforced by the Optional Protocol on Communications Procedure and its Rules of Procedure, which allows children to submit complaints concerning violations of the UNCRC.⁷⁴ Hence, within the UNCRC framework, children's right to participation is indisputable.⁷⁵

The Report of the 2016 Day of General Discussion on Children's Rights and the Environment further confirmed the role of children as agents of change in environmental issues.⁷⁶ It recommended that States educate children, promote their direct involvement in environmental protection, and create child-friendly platforms for environmental participation to ensure that children are given opportunities to voice their opinions and concerns.⁷⁷

However, the effective participation of children in environmental matters cannot be realised without assistance and concerted support from both State and non-State actors. In particular, the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment elaborates four specific elements that States must fulfil to meet this obligation: (1) environmental education; (2) information and assessment; (3)

⁷³ Doek J.E., 'The UN Convention on the Rights of the Child: An Instrument for Creating a Healthy Environment for the Child' in Garbarino J. & Sigman G. (eds.), *A Child's Right to a Healthy Environment* (Springer 2010) 139-148; Radina, A., 'The Child's Right to a Healthy Environment' in Radic, Z., Roncevic, A. & Yongqiang, L. (eds.), *Economic and Social Development: Book of Proceedings* (2017) 12-23.

⁷⁴ Preamble of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (14 July 2011) UN Doc A/HRC/RES/17/18; Convention on the Rights of a Child, Rules of Procedure under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (16 April 2013) UN Doc CRC/C/62/3, art 13.

⁷⁵ There are abundant arguments throughout the UNCRC, which places children in an active position not only about matters that are directly related to them but also to the rest of the society, as part of the community. The Preamble of the UNCRC starts by 'Considering that the child should be fully prepared to live an individual life in society,' which naturally implies that states are obligated to 'ensure [...] the survival and development of the child' (Article 6), something that is guaranteed if they have ' [...] the right to express [...] ' and the ' [...] opportunity to be heard [...] ' (Article 12). The latter, confirmed by the insurance of the right to freedom of expression (Article 13), freedom of peaceful assembly (Article 15), to be able to share their opinions and interests with others, and access to information ' [...] from a diversity of national and international sources [...] ' (Article 17), meaning that the child is not to be considered only in his/her local community, but also is a part and should be involved with the rest of the world.

⁷⁶ Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016), 33-34. The same was established regarding climate change in Human Right's Council, *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.

⁷⁷ It also notably defined the right to participation as 'having the right to be heard and taken seriously by governments on different levels in regard to environmental laws, policies and practices' (ibid 19).

consideration of the views of children; and (4) provision of effective remedies.⁷⁸ In the subsequent sections, these elements are elaborated in relation to their corresponding rights in accordance with the UNCRC.

Link to National Practice: Maximising Children's Participation

In Scotland, the current participation mechanisms are ineffective in ensuring children from diverse backgrounds can exercise their rights and influence decisions in environmental matters that directly affecting them.⁷⁹ A maximalist approach of incorporating children's participation into the right to a healthy environment in the national context requires the engagement of children from diverse backgrounds with intersectionality in mind.⁸⁰ This should be encouraged during the Scottish government's annual Cabinet meeting with children and young people, which provides the opportunity to share and discuss concerns on policy changes with high-level government officials.⁸¹

B. Participation and Children's Right to Education

The UNCRC reinforces the right to education with the idea that children should be educated and informed on matters of environmental issues and human rights.⁸² Thus, it confirms the position of the 1972 Stockholm Declaration, which established that education in environmental matters is essential for 'the younger generation as well as adults.'⁸³ This is further reinforced by UNCRC Article 29(1)(e), which

⁷⁸ See Human Rights Council, *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/37/58, paras 40-54.

⁷⁹ Miller, J. & Kerridge, E., *Crown Estate Scotland Corporate Plan (2020-23): Consultation with Children and Young People* (February 2020).

⁸⁰ National Taskforce for Human Rights, *Leadership Report* (Scottish Government 2021), 19 para 4 and 53 para 4.

⁸¹ 'Children and Young People's Participation: Practice Examples' Scottish Government (2 March 2020).

⁸² This has been established in Article 24(2)(e), as States have the obligation to keep parents and children informed and educate them, among others, in matters of 'environmental sanitation.' Article 29(1) further establishes that education should be directed '[...] to development of respect for human rights and fundamental freedoms' (b) and to 'the development of respect for the natural environment' (e).

⁸³ Principle 19 of the Stockholm Declaration. See also Agenda 21 of the United Nations Conference on Environment & Development (Rio de Janeiro, Brazil, 3 to 14 June 1992) (The Earth Summit): 'Countries [...] should ensure that essential human resources exist ... to undertake the integration of environment and development [...] To do this, they should improve education and technical training,

established that the education of the child should be directed to '[t]he development of respect for the natural environment.' Additionally, according to the CRC in General Comment No. 1, environmental education should reflect a person's culture, language, and environmental situation, including how it impacts education at home, at school, and within the community. It should also facilitate direct experiences with the natural environment and 'encompass both national and international problems.'⁸⁴

However, environmental education should not only target children. States and the private sector must be given concrete guidance on how they can ensure effective education.⁸⁵ For example, several States have included environmental education as the focal point in their National Plan of Action (NPA) by implementing educational tools appropriate for various stages of schooling and implementing teacher-training on environmental education.⁸⁶ While the UK government has been criticised for its

particularly for women and girls [...] (Chapter 8.10(c)); 'Schools should involve schoolchildren in local and regional studies on environmental health [...] (Chapter 36.5(e)) and 'UNICEF should make child-oriented material available to media as an educational tool [...] (Chapter 36.10(e)).

⁸⁴ Committee on the Rights of the Child, 'General Comment No. 1 (2001): Article 29(1): The Aims of Education ' (17 April 2001) UN Doc CRC/C/GC/2001/1, para 13. Also see Human Rights Council, *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/37/58, paras 40-41. See also Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016), 18 on the elements that should characterise environmental rights education: '1) Education should aim towards a positive relationship of humanity with nature and those who live in it, taking into account that a healthy environment is an underlying determinant of the quality of life. 2) Sensitising children to the value of nature's resources, and their conservation, will help them recognise and defend their environmental rights both for current and future generations. 3) Age-appropriate methods combined with localised contents grounded in everyday life should help convey the complexity of environmental issues and their linkages with socio-economic problems. 4) Involvement in e.g., conservation efforts is a crucial component of this learning process and an exercise in social practices that constitute civic participation. 5) Children who start to identify environmental issues by themselves, call for change and take part in solving problems effectively share in protecting their rights.' Note that this is an increasingly important obligation in the wake of the COVID-19 pandemic, where children have relied on online learning platforms to access education.

⁸⁵ 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' (17 April 2013) UN Doc CRC/C/GC/16, para vi(e): 'Education, training and awareness-raising about the Convention should also be targeted at business enterprises to emphasize the status of the child as a holder of human rights.' Social media also has a relevant role in raising public consciousness through the dissemination of information, especially in the digital era and in the wake of COVID-19 pandemic. See further, Popovic, N.A.F., 'The Right to Participate in Decisions That Affect the Environment' (1993) 10(2) *Pace Environmental Law Review* 683.

⁸⁶ Human Rights Council, *Report of the Independent Expert on the Issue of Human Rights Obligations to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, John H. Knox (3 February 2015) UN Doc A/HRC/28/61, para 35. Algeria, for example, makes environmental education one of the key topics in its national plan of action for environmental and sustainable development. Ghana and Costa Rica also have innovative practices that enhance environmental rights protection.

incohesive teaching on climate change,⁸⁷ New Zealand for example, is implementing a curriculum that ensures every school has ‘access to materials about the climate crisis written by the country’s leading science agencies.’⁸⁸ These educational materials will include an age-appropriate activism tool for children and young people which helps them to participate in ensuring a healthy environment and allows them to express anxiety and frustration over climate change.⁸⁹

Link to National Practice: Environmental Education

Complementing Scotland’s existing educational initiatives for children,⁹⁰ further steps could be taken to promote the right to a healthy environment within children’s education, such as providing forums and mechanisms for children to discuss environmental issues and suggest protective measures that are important to them. For example, children’s groups in both schools and local council areas could be supported to organise and lead healthy environment-themed panels with the aims of addressing environmental concerns with local and national policy-makers.⁹¹

⁸⁷ See Harvey, F., ‘The National Curriculum Barely Mentions the Climate Crisis. Children Deserve Better’ *The Guardian* (11 February 2020); Burns, J., ‘Climate Change: Schools Failing Us, Says Pupils’ *BBC News* (24 February 2020).

⁸⁸ Graham-McLay, C., ‘New Zealand Schools to Teach Students About Climate Crisis, Activism and Eco-anxiety’ *The Guardian* (13 January 2020).

⁸⁹ *ibid.*

⁹⁰ For example, the Young Leaders of Learning Program (YYL) has already been established as a forum for children and youth to provide feedback on where there could be improvements in their education and school buildings, what aspects are being applied well, and how to effectively promote active participation within the education system. The pilot program was used in five primary and five secondary schools across Aberdeen, Moray, and Glasgow with participation of over 150 primary 4 to secondary 6 children. Similarly, Scotland has established The Map-do-review method into children’s educational outcomes, which is aimed at engaging with children at all developmental stages to ‘lead their own learning and provide them with a meaningful voice.’ Following this method, children are able to voice their opinions and views of their learning using any form of expression, such as colours, symbols and pictures, or words, allowing for the inclusion of all children. See further ‘Children and Young People’s Participation: Practice Examples’ Scottish Government (2 March 2020).

⁹¹ Similar to Norway, where the Local Government Act requires the creation of three advisory boards, one of which is comprised of adolescents: see Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Visit to Norway* (3 January 2020) UN Doc A/HRC/43/53/Add.2, para 24.

C. Participation and Children's Right to be Heard

Because children can provide distinctive and invaluable perspectives and experiences, UNCRC Article 12 guarantees the right of children to be heard⁹² and obligates States to give due consideration to their views.⁹³ Therefore, the unique perspective of children should be taken into account in tackling long-term environmental challenges and protected from reprisals.⁹⁴ Children's right to participation has, for instance, been constitutionally implemented in Paraguay, Finland, Nepal, Norway, and Egypt, among other States, emphasising the crucial role of children in the decision-making process.⁹⁵

The political process is a critical area in which children should be heard. However, even with the Reduction of Voting Age Bill (2015),⁹⁶ the most basic form of democratic participation is unavailable to children in Scotland prior to the age of 16.

⁹² This guarantee was repeated in the 2012 Conference on Sustainable Development: 'We recognize that the younger generations are the custodians of the future [...]' (para 230). It also establishes in paragraph 31: 'We emphasize that sustainable development must be inclusive and people centred, benefiting and involving all people, including youth and children [...]' Also see paragraph 229: 'We further reaffirm that full access to quality education at all levels is an essential condition for [...] the full participation of both women and men, in particular young people': UN General Assembly, 'Resolution adopted by the General Assembly on 27 July 2012: The Future We Want' UN Doc A Res/66/288* (Rio+20).

⁹³ Committee on the Rights of the Child, 'General Comment No. 12 (2009): The Right of the Child to be Heard' (20 July 2009) UN Doc CRC/C/GC/12, para 12. However, 'children's voices and interests are systematically disregarded in environmental decision-making,' see Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016), 21.

⁹⁴ Human Rights Council, *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/37/58, paras 48-50.

⁹⁵ Paraguay's Constitution expressly recognises young people's right to participation in Article 56: 'The conditions for an active participation of youth in the political, social, economic, and cultural development of the country shall be promoted': Constitution of Paraguay 1992, as amended to 2011 [Paraguay], 20 June 1992. Also see Constitution of Finland [Finland], 11 June 1999, Section 6 of chapter 2: 'Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development'; Constitution of the Kingdom of Norway as amended in 2018 [Norway], 17 May 1814 art 104: 'Children have the right to respect for their human dignity. They have the right to be heard in questions that concern them, and due weight shall be attached to their views in accordance with their age and development'; Constitution [Nepal], 2015 (2072.6.3), 20 September 2015 art 39(3): 'Every child shall have the right to elementary child development and child participation'; and Constitution of the Arab Republic of Egypt [Egypt], 18 January 2014, art 82 (Youth): 'The state guarantees the care of youth and young children, in addition to helping them discover their talents and developing their cultural, scientific, psychological, creative and physical abilities, encouraging them to engage in group and volunteer activity and enabling them to take part in public life.'

⁹⁶ Similar to Nicaragua, Ethiopia, Ecuador, Cuba, Brazil and Austria, which also establish 16 years as voting age. In Sudan, South Sudan, North Korea, Indonesia and Greece, the voting age is 17 years.

This means that children and young people are underrepresented within the political decision-making process, as they cannot directly influence policies as full constituents by electing authorities that represent their views. As environmental decision-making processes are likewise only designed for adults, the specific needs of children and young people are continuously side-lined, which remains a persistent concern in Scotland.⁹⁷ Moreover, a formal process or mechanism for children to be heard is lacking in overall strategy and due diligence processes within the private sector, at both the individual corporate and industry-levels.

Link to National Practice: Fostering Children's Voices

Although Scottish children participate in the Scottish Youth Councils and the First Minister's Question Time, they still express feeling 'excluded and disadvantaged', which discourages them from speaking up.⁹⁸ Barriers to participating in national policymaking expressed by young people include poverty, parental control, and the underlying notion of adults needing to protect and teach children, instead of listening to them as active agents of change.⁹⁹ To address this gap, the Scottish government should establish comprehensive guidelines detailing the process for gathering and incorporating the input of children to ensure effective participation in both governmental and private sector¹⁰⁰ decision-making.¹⁰¹ Concrete guidance for

⁹⁷ Miller, J. & Kerridge, E., *Crown Estate Scotland Corporate Plan (2020-23): Consultation with Children and Young People* (February 2020).

⁹⁸ A study conducted by McGinley and Grieve with a sample of '76 young people aged 12 to 18 years in six youth councils in Scotland' found that a majority of the participants felt they aren't encouraged to use their voices and feel 'excluded and disadvantaged' in participation opportunities. Although the study had a small sample size, it displayed the need for campaigns to encourage children of diverse Scottish backgrounds in participating in these types of forums and the need for government officials to validate and acknowledge the work of children and youth participating to promote topic discussions to challenge the current agendas set by adults to conform to the concerns of the youth at the time: McGinley, B. & Grieve, A., 'Maintaining the Status Quo? Appraising the Effectiveness of Youth Councils in Scotland' in Smith, B.P. & Thomas, N. (eds.), *A Handbook of Children and Young People's Participation: Perspectives from Theory and Practice* (Routledge 2010) 254-262, 256. See further 'Children and Young People's Participation: Practice Examples' Scottish Government (2 March 2020).

⁹⁹ Rossi, E. & Baraldi, C., 'The Promotion of Children's and Adolescents' (2008) 23(1) *Social Participation in Italy and Scotland* Children & Society 16.

¹⁰⁰ 'Governmental bodies [...] monitoring the activities and operations of business enterprises should ensure that they take into account the views of affected children': 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' (17 April 2013) UN Doc CRC/C/GC/16, para iii(d).

¹⁰¹ This is already addressed by different CRC General Comments: see 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)' (17 April 2013) UN Doc CRC/C/GC/15, para e ('States are encouraged to conduct regular participatory consultations, which are adapted to the age and maturity of the child, (...) to the design of effective interventions and health programmes'); and Committee on

businesses¹⁰² to incorporate a children's perspective in their HRDD processes is elaborated in CRBP Principle 1 (see **Appendix II**). National and local organisations should also support children's involvement in environmental decision-making processes. Lastly, adequate protection should be guaranteed for child and youth human rights defenders who advocate for the right to a healthy environment in political spaces.¹⁰³

Specific procedural means can also enhance the participation of children in environmental decision-making processes. EIAs could be a key tool for ensuring a healthy environment by providing an opportunity for children to participate and have their rights considered in decisions that evaluate and mitigate the likely environmental impacts of projects.¹⁰⁴ Norway stands as an example of best practice, where children are explicitly incorporated into planning and development.¹⁰⁵ Likewise in Sweden, Stockholm employs an "Integrated Child Impact Assessment" method to

the Rights of the Child, '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 v(a) ('The Committee underlines the importance of providing opportunities for children to contribute to the development of legislation, policies, strategies and design of services to ensure the implementation of the rights under article 31').

¹⁰² This includes all businesses that have at least part of their operations or headquarters in Scotland.

¹⁰³ Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016).

¹⁰⁴ An EIA is a procedural tool used to evaluate 'the likely impact of a proposed activity on the environment': Convention on Environmental Impact Assessment in a Transboundary Context (adopted 25 February 1991, entered into force 10 September 1997) 1989 UNTS 309 (Espoo Convention) art 1(vi). The International Court of Justice has recognised EIAs as an obligation under international law, especially for activities that can have a transboundary effect: see *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, para 204. EIAs are further provided for in the Rio Declaration (see Principle 17: 'Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority') and within the UN Framework on Climate Change (see UNFCCC art 4; Adoption of the Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) FCCC/CP/2015/L.9/Rev.1 art 7(9)).

¹⁰⁵ Section 21 of the 2017 Impact Assessment Regulation states that an impact assessment 'should identify and describe the factors that may be affected and assess significant environmental and social impacts, including the upbringing conditions of children and adolescents': Regulations on Impact Assessments, Established by Royal Decree of 21 June 2017 pursuant to Act of 27 June 2008 No 71 Relating to the Planning and the Processing of Building Applications (The Planning and Building Act) sections 1-2, 4-2, 14-6 and 32-8a. For projects at the municipal level, the 2008 Planning and Building Act states that municipalities have an obligation to 'ensure active participation from groups that require special facilities, including children and youth': Act of 27 June 2008 No 71 relating to Planning and the Processing of Building Applications (The Planning and Building Act), s 5-1. The Act also imposes a duty on municipal councils to 'ensure that a special arrangement is established to safeguard the interests of children and young people in the planning': *ibid*, s. 3-3.

ensure the right of the child is included in the city planning process.¹⁰⁶ While many States have legislation requiring EIAs to be conducted for certain types of projects,¹⁰⁷ the substance and extent of public consultation is not typically established, leaving open who can participate and what agenda items can be discussed. The specific consideration of project impacts on children's rights and their participation in consultations are typically lacking because, unlike adults, they are not often recognised as being autonomous or emancipated citizens.¹⁰⁸

Link to National Practice: Involving Children in Environmental Planning

Scotland currently uses Children's Rights and Wellbeing Impact Assessments (CRWIAs) to 'identify, research, analyse and record the anticipated impact of any proposed law, policy or measure on children's human rights and wellbeing,'¹⁰⁹ but these assessments do not consider environmental factors. Consequently, this practice overlooks the holistic relationship between the environment, children, and their rights. **Continuing the momentum in child-rights-based decision-making at the institutional level, Scotland should amend relevant legislation to ensure environmental impacts on children's rights are specifically assessed within project planning processes and EIAs.**¹¹⁰ It is also crucial that environmental factors are incorporated into the current CRWIAs.

¹⁰⁶ See further, Klingwall, L. & Henriksson, E., *Integrated Child Impact Assessment in Stockholm* (3 December 2019).

¹⁰⁷ Human Rights Council, 'Recognition of the Right to a Healthy Environment in Constitutions, Legislation and Treaties: Western Europe and Others Region' (14 February 2020) UN Doc A/HRC/43/53/ Annex VIII, para 7. While the scope and content of an EIA are largely left to national discretion (see *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, para 205), there are certain recognised elements that make an EIA effective, such as the timing of the assessment (to occur as early as possible in the process), meaningful participation of the public, consideration of alternative measures, and monitoring of the proposal's implementation in order to assess 'its actual impacts and the effectiveness of protective measures': Human Rights Council, *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 (Knox Report), para 20.

¹⁰⁸ As it stands, any consideration of a project's potential impacts on children is traditionally done (if at all) through children's impact assessments.

¹⁰⁹ See 'Children's Rights and Wellbeing Impact Assessments: Guidance' Scottish Government (nd.), 4.

¹¹⁰ The Special Rapporteur on the Healthy Environment expressly suggests that EIAs examine the potential impacts of projects and policies on the enjoyment of human rights (see Human Rights Council, *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) (Knox Report)

D. Participation and Children's Right to Information

As recognised by UNCRC Article 13, children have the right to seek and receive information. This right allows children to effectively exercise their right to participation in relation to other rights, particularly their right to a healthy environment. States are therefore required to deliver the information in a comprehensive and age-appropriate way, which meets nine criteria (described in detail in **Appendix I**) that it is: (a) transparent and informative; (b) voluntary; (c) respectful; (d) relevant; (e) child-friendly; (f) inclusive; (g) supported by training; (h) safe and sensitive to risk; and (i) accountable.¹¹¹

States are further obliged to collect, update, and protect information gained through EIAs as well as guarantee public access.¹¹² In practice, this means States should ensure that environmental assessments are easily available to the public in a timely fashion. A good example is Serbia's Ecoregister, a user-friendly public online database that allows users to access relevant and comprehensive information on the environment based on search criteria. It houses documents such as educational materials, EIAs, data on environmental information, and monitoring plans for private companies.¹¹³

The information available to children and young people, however, should not be limited to environmental education and technical assessments. As detailed in next section, it should also clarify how children can participate in decision-making processes and access justice when their rights have been breached.

UN Doc A/HRC/37/59, Principle 8) and emphasises the need for EIAs to carefully examine the impacts of a project on the most vulnerable, including children (ibid, paras 41(b), 43).

¹¹¹ Committee on the Rights of the Child, 'General Comment No. 12 (2009): The Right of the Child to be Heard' (20 July 2009) UN Doc CRC/C/GC/12, para 134.

¹¹² Human Rights Council, *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/37/58, paras 44-45. It also needs to be in terms that non-experts can understand and express in a manner appropriate to their age and capacities (ibid).

¹¹³ Human Rights Council, *Report of the Independent Expert on the Issue of Human Rights Obligations to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, John H. Knox* (3 February 2015) UN Doc A/HRC/28/61, para 39.

PART III. ENHANCING ACCESS TO JUSTICE IN ENVIRONMENTAL ISSUES

'Justice should be children's friend. It should not walk in front of them, as they may not follow. It should not walk behind children, as they should not be burdened with the responsibility to lead. It should just walk beside them and be their friend.'

- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice¹¹⁴

In cases where States have failed to prevent and mitigate environmental harm, access to justice is an essential aspect of the right to participation and is crucial for protecting children's right to a healthy environment.¹¹⁵ It is also instrumental in preventing the recurrence of environmental rights violations and in safeguarding the future of all generations.

Under the existing human rights framework, 'states have a duty to ensure that children have access to effective remedy for violations of their rights' by State and non-State actors.¹¹⁶ The obligation to provide effective remedies is implicit in the UNCRC and requires States to create effective and child-sensitive judicial procedures, to distribute child-friendly information on available avenues of justice, and to permit collective suits by and on behalf of children, including future generations.¹¹⁷

Effective remedy is a positive obligation requiring that States ensure adequate incorporation of environmental protections in national legislation and enforcement of international human rights treaties and environmental soft law.¹¹⁸ To meet this

¹¹⁴ Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* (November 2010), 10.

¹¹⁵ Human Rights Council, *Report of the Independent Expert on the Issue of Human Rights Obligations to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, John H. Knox (3 February 2015) UN Doc A/HRC/28/61, para 39.

¹¹⁶ Human Rights Council, *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 (Tuncak Report), para 39.

¹¹⁷ Human Rights Council, *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/37/58, para 52; Committee on the Rights of the Child, 'General Comment No. 5 (2003): General Measures on the Implementation of the Rights of the Child' (27 November 2003) UN Doc CRC/GC/2003/5, para 24; Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016).

¹¹⁸ Human Rights Council, *Report of the Special Rapporteur on the Issues of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean and Healthy Environment* (24 January 2018) UN Doc A/HRC/37/59, para 13.

obligation, States must 'take deliberate, concrete and targeted measures'¹¹⁹ to promote the best interest of the child.¹²⁰ Hence, States are obliged to ensure effective remedy for children whose right to a healthy environment has been breached by States and other actors.

An effective remedy that is cognisant of the needs of a child accessing the justice system includes: (a) the right to have equal and fair access to justice; (b) the right to prompt and effective reparation for injury sustained; and (c) access to information on justice procedure and reparation mechanism.¹²¹ The right of the child to access justice also encompasses rehabilitation, compensation, and the guarantee of non-recurrence when their rights have been breached.¹²²

A. Barriers to Justice for Children and Young People

The CRC has emphasised that rights enshrined in the UNCRC have no meaning without the opportunity to seek redress when breached,¹²³ yet children struggle to access judicial remedy for environmental harms. This is due to several reasons such as a lack of legal standing,¹²⁴ deficits in legislation, policy, and regulation, and challenges in establishing direct causation and/or proving harm.¹²⁵

¹¹⁹ *ibid*, paras 31-32.

¹²⁰ Human Rights Council, *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/37/58, para 56. As there can be many instances where reparation in environmental matters is not possible, States should endeavour to prevent harm by all available means and, if prevention was not possible, limit ongoing and future harms: see *ibid*, paras 51-54.

¹²¹ Human Rights Council, *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 (Tuncak Report).

¹²² Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016).

¹²³ 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)' (17 April 2013) UN Doc CRC/C/GC/15.

¹²⁴ *Juliana v United States* No. 18-36082 (9th Cir. 2020).

¹²⁵ United Nations International Children's Emergency Fund, *A Brighter Tomorrow: Climate Change, Child and Intergenerational Justice* (2010), 14; Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016); Human Rights Council, *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/37/58, paras 51-54; Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Right to a Healthy Environment: Good Practices* (30 December 2019) UN Doc A/HRC/43/53, para 30.

Barrier 1: Legal Standing

The requirement that complainants must be directly affected or establish sufficient interest¹²⁶ in proceedings significantly curtails the ability of children to seek redress for environmental harm through judicial means.¹²⁷ Although public interest litigation allows for third parties such as NGOs to bring forward a suit on behalf of a group of victims (such as children) who cannot establish standing alone, it is not available in all jurisdictions.¹²⁸

Barrier 2: Deficits in Substantive Legislation and Environmental Policy

As mentioned previously, a binding international framework on the right to a healthy environment has not been realised, despite a broad range of protections already situated within national, regional, and international instruments.¹²⁹ Furthermore, environmental policies and legislation infrequently refer to children, and when they do, they fail to mainstream the rights of the child in mechanisms that specifically promote the right to a healthy environment.¹³⁰ Although subsisting international human rights treaties provide legal guarantees for effective redress of environmental harm,¹³¹ business actors – aided by States – continue to exploit gaps in legislation to

¹²⁶ To prove sufficient interest, a person seeking to bring a petition must show that they are directly affected by the matter, have a 'reasonable concern', or are able to express a concern 'genuinely' on the part of a segment of the population they seek to represent: *The Christian Institute & Others v The Scottish Ministers* [2015] CSIH 64, para 40. The Aarhus Convention provides that '[w]hat constitutes a sufficient interest and impairment of a right shall be determined [...] consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention' (art 9(1)).

¹²⁷ Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016).

¹²⁸ Examples of states where NGOs have standing to institute a lawsuit for the violation of rights include Argentina, Colombia, Costa Rica, India, Portugal, Romania, and Slovenia: Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Right to a Healthy Environment: Good Practices* (30 December 2019) UN Doc A/HRC/43/53.

¹²⁹ Human Rights Council, *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) (Knox Report) UN Doc A/HRC/37/59; United Nations International Children's Emergency Fund, *A Brighter Tomorrow: Climate Change, Child and Intergenerational Justice* (2010), 6; ICESCR art 13; UDHR art 25; CRPD art 25; CEDAW art 12; Knox, J., 'Constructing the Human Right to a Healthy Environment' (2020) 16(1) *Annual Review of Law and Social Science* 79.

¹³⁰ Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children's Rights and the Environment* (2016).

¹³¹ Articles 3 and 9 of the Aarhus Convention obliges states to take necessary legislative, regulatory and enforcement measures to facilitate access to justice in environmental matters for aggrieved persons. Also, Principle 1 of the UNGPs calls on states to take 'appropriate steps to prevent, investigate, punish and redress' human rights abuses linked to business activities. Also see UDHR art 8; ICCPR art 2(3); UNCRC art 39.

avoid liability for violations of children's right to a healthy environment.¹³² Separation of powers and States' discretion to create policies have also been used to challenge climate change cases,¹³³ creating difficulties for children when establishing justiciable cause of action in cases where their rights have been violated by environmental harm.

Barrier 3: Causation and the Burden of Proof

For an environmental litigation to be successful, claimants against a State must establish three elements, that: (a) the risk suffered was sufficiently foreseeable from action/inaction by the State; (b) the State had reasonable knowledge of such risk; and (c) the State failed to exercise due diligence.¹³⁴ States, however, often argue that they do not have control over transboundary harm originating from another State and deny responsibility for harm to persons outside of their jurisdiction.¹³⁵ When it comes to the private sector, damages for environmental harm caused by businesses are pursued through tort, or delict, actions.¹³⁶ Cases against the "carbon majors" challenge the continuous emission of GHG by corporations and seek judgments to hold them liable for resulting damages.¹³⁷ While some cases have successfully linked environmental damages to the human rights impact of business activities,¹³⁸ most have failed because the relationship between human rights and business

¹³² Shelton, D., 'Complexities and Uncertainties in Matters of Human Rights and the Environment: Identifying the Judicial Role' in Knox, John H. & Pejan, R. (eds.), *The Human Right to a Healthy Environment* (Cambridge University Press 2018) 97-121. The objections raised by States often concern the level of risk imposed on a State by its positive obligations, and the geographic scope covered by States' human rights obligations: see Duffy, H. & Maxwell, L. 'People v Arctic Oil before Supreme Court of Norway – What's at Stake for Human Rights Protection in the Climate Crisis' EJIL: Talk! (13 November 2020).

¹³³ Shelton, D., 'Complexities and Uncertainties in Matters of Human Rights and the Environment: Identifying the Judicial Role' in Knox, John H. & Pejan, R. (eds.), *The Human Right to a Healthy Environment* (Cambridge University Press 2018) 97-121. See e.g., *The People v Arctic Oil (Nature and Youth, Greenpeace v Norway's Ministry of Petroleum and Energy)* [2020] case no 18-060499ASD-BORG/03.

¹³⁴ *ibid.*

¹³⁵ *ibid.*

¹³⁶ Setzer, J. & Byner, R., 'Global Trends in Climate Change Litigation: 2020 Snapshot' Grantham Research Institute on Climate Change and the Environment and the Center for Climate Change Economics and Policy, London School of Economics and Political Science (2020).

¹³⁷ *ibid.*

¹³⁸ see e.g., *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others* (2005) AHRLR 151 (NgHC 2005).

responsibilities are mainly enshrined in soft law.¹³⁹ Corporations also challenge climate litigations on the grounds that climate change is a global problem and cannot be directly linked to the activities of any particular corporation.¹⁴⁰ When complex judicial requirements are placed on litigants to establish a breach of their rights in environmental cases, children face an increased burden to prove that a particular activity led to environmental harm. It is especially problematic to establish direct causation of harm in climate change cases, as often the effects are not always quantifiable, and the impact occurs over the long-term and into the future.¹⁴¹

Link to National Practice: Enhancing Access to Justice for Children

Opportunity 1. While Scotland allows organisations to petition for judicial review where sufficient interest is established and to intervene as a third party within proceedings,¹⁴² strategic use of public interest litigation by NGOs has been rare.¹⁴³ Therefore, ‘standing should be construed more broadly’¹⁴⁴ to enable children – and those who act on their behalf – the ability to obtain remedy for the breaches of their rights regarding a healthy environment. This requires broadening the test for establishing sufficient interest in line with the Aarhus Convention.¹⁴⁵

Opportunity 2. Scotland could ensure the right to a healthy environment is justiciable before courts by legally recognising it as a right. In order to support

¹³⁹ Setzer, J. & Byres, R., ‘Global Trends in Climate Change Litigation: 2020 Snapshot’ Grantham Research Institute on Climate Change and the Environment and the Center for Climate Change Economics and Policy, London School of Economics and Political Science (2020).

¹⁴⁰ Peel, J. & Osofsky, H. M., ‘A Rights Turn in Climate Change Litigation?’ (2018) 7(1) Transnational Environmental Law 37.

¹⁴¹ Committee on the Rights of the Child, *Report of the 2016 Day of General Discussion: Children’s Rights and the Environment* (2016).

¹⁴² Clan Childlaw et al, *Discussion Paper: Overcoming Barriers to Public Interest Litigation in Scotland* (2018), 7-8.

¹⁴³ *ibid* 4. Significant barriers to NGOs bringing litigations forward include poor access to information, rules on standing, time limits to taking or bringing cases, significant costs, and culture surrounding the use of public interest litigation (*ibid* 1). Some environmental cases have, however, seen successful NGO intervention. Friends of the Earth Scotland intervened to raise environmental concerns in *Ineos Upstream Ltd and Another v Lord Advocate* [2018] CSOH66. RSPB Scotland initiated judicial review of plans for offshore wind turbines via in *RSPB v Scottish Ministers* [2016] CSOH 103 [2017], CSIH 31. Similarly, The John Muir Trust initiated judicial review of windfarm development in *Stronelairg* [2015] CSOH 163, [2016] CSIH 61 (*ibid*, note 7).

¹⁴⁴ Human Rights Council, *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 (Knox Report), para 30.

¹⁴⁵ See in particular art 9(1).

children bringing environmental claims in courts, national and local organizations should produce educational materials that further children's awareness of current environmental harms and avenues of judicial redress, with specific reference to available local and State legal remedies. Likewise, Scotland should ensure that businesses provide for remediation through legitimate and child-friendly processes, including effective operational-level grievance mechanisms (see **Appendix II**).

Opportunity 3. Educating children in Scotland to understand gaps in climate science can empower them to apply pressure to relevant actors to publish pertinent information needed to establish causation and prove harm within the judicial system.

In order to address these challenges, recent environmental and climate change action has utilised a human rights-based approach.¹⁴⁶ This approach has proven to be innovative and holds promise, as illustrated by the cases presented in the next section.

B. Comparative Approaches to Access to Environmental Justice

Jurisprudence from other States demonstrates that obstacles to access to justice in support of a healthy environment can be successfully overcome. In particular, recognition of the legal standing of children (e.g., *Future Generations v. Ministry of the Environment and Others*¹⁴⁷) and of rights-based claims by courts (e.g., *Urgenda v. The State of Netherlands*¹⁴⁸ and *Mathur v. Ontario*¹⁴⁹) have allowed for successful litigation, ensuring the implementation of climate action¹⁵⁰ and, by extension, better protection of the right to a healthy environment for all.

Each of these cases (summarised in the table below) has demonstrated significant developments in environmental jurisprudence, showing the importance of securing

¹⁴⁶ Knox, J., 'Constructing the Human Right to a Healthy Environment' (2020) 16(1) Annual Review of Law and Social Science 79.

¹⁴⁷ *Future Generations v Ministry of the Environment and Others*, Supreme Court of Colombia, (2018) STC4360-2018, Consideration 11(3).

¹⁴⁸ *Urgenda v Netherlands*, (2015) HAZA C/09/00456689.

¹⁴⁹ *Mathur v Ontario*, (2020) ONSC 6918.

¹⁵⁰ Setzer, J. & Byres, R., 'Global Trends in Climate Change Litigation: 2020 Snapshot' Grantham Research Institute on Climate Change and the Environment and the Center for Climate Change Economics and Policy, London School of Economics and Political Science (2020).

children's ability to access justice and argue that their right to a healthy environment has been breached.

Case	Year	Complainants	Claims Filed	Specific Jurisprudence Outcomes
<i>Future Generations v. Ministry of the Environment and Others</i>	2018	25 Children	They claimed their rights to a healthy environment, life, health, food, and water were threatened by climate change and the deforestation of the Amazonas. ¹⁵¹	<p>The Court found that the claimants' standing as legal minors did not limit their ability to seek constitutional rights to remedy.¹⁵¹</p> <p>The Court further referred to the principle of solidarity to hold that the state of Colombia was obligated to protect the claimants, future generations, and all other groups living in the Amazonas, as well as all people of the planet, including all living creatures.¹⁵²</p>
<i>Urgenda v. the State of Netherlands</i>	2019	The Urgenda Foundation and 900 Dutch citizens	They claimed their government for failure to take sufficient action to prevent climate change. ¹⁵³	<p>The court found, due to the scientific evidence of the devastating impact of climate change, the burden on the litigant is to prove that the harm is reasonably foreseeable as is the case with climate change.¹⁵³</p> <p>According to the Court, the uncertainty in the degree of climate change risk does not erase the potential loss of lives if States fail to effectively mitigate the catastrophic impact of climate-related disasters.¹⁵⁵</p>
<i>Mathur v. Ontario</i> (Case on going)	2020	7 Young People	They are claiming the government's repeal of climate change legislation and its failure to set a more stringent GHG target violated the rights of youth and future generations under the Canadian Charter of Rights and Freedoms. ¹⁵⁷	<p>The Superior Court of Justice, however, rejected the arguments of the Ontario government and held that fundamental rights are threatened by climate change, and that citizens have the right to challenge the efficacy of State efforts to mitigate it.¹⁵⁹</p> <p>The Court held that the application concerned a reasonable cause of action and dismissed the motion to strike.¹⁶⁰</p>

In *Future Generations v. Ministry of the Environment and Others*, the judgment established future generations as potential victims in need of protection¹⁵¹ and the need to protect diverse populations, both human and others.¹⁵² Children's rights and direct participation in this case were especially influential in highlighting the impact of climate change, since children and future generations are disproportionately affected, and thus more at risk for future threats.

¹⁵¹ *Future Generations v Ministry of the Environment and Others*, Supreme Court of Colombia, (2018) STC4360-2018, Consideration 3. Article 19 of Colombia's Constitution establishes the right to a healthy environment and also guarantees the participation of citizens in decisions that might affect the environment. Article 95 N° 8 also establishes the duty of the citizens to look after a healthy environment, while Article 67 codifies the necessity to direct education towards the protection of the environment: Constitución Política de Colombia [Colombia], 27 October 1991.

¹⁵² *Future Generations v Ministry of the Environment and Others*, Supreme Court of Colombia, (2018) STC4360-2018, Consideration 11(3).

In *Urgenda v. the State of Netherlands*,¹⁵³ The court's decision contributed to the rights-based jurisprudence of climate change, standing as the first successful case where a State government was recognised to have an obligation to prevent climate change. Notably, this case established climate change as a human rights issue, holding that the sum of international treaties, soft law sources, the 'No Harm' principle of international law, and the ECHR¹⁵⁴ gave grounds for State responsibility in preventing and mitigating climate change, including environmental harms from the private sector.¹⁵⁵ In this case, the State challenged the action on the ground that climate change was not an imminent risk that could lead to a successful action. However, the Court established a positive obligation on the part of the State to take climate change action by establishing "serious risk" instead of the "imminent risk" principle usually applied in environmental cases.¹⁵⁶

Similarly, in *Mathur v. Ontario*,¹⁵⁷ the Attorney-General brought a motion to strike the application, arguing that: a) the claimants lacked standing to represent future generations; b) the burden of proof could not be discharged or demonstrate that failure of the Ontario government to mitigate climate change violated their rights; and c) the claimants failed to establish a reasonable cause of action.¹⁵⁸ The Superior Court of Justice, however, rejected the province's arguments and held that fundamental rights are threatened by climate change, and that citizens have the right to challenge the efficacy of State efforts to mitigate it,¹⁵⁹ and dismissed the motion to strike.¹⁶⁰

In each of these cases, claimants established the relationship between climate change and the realisation of their human rights (and that of future generations).

¹⁵³ *Urgenda v Netherlands*, (2015) HAZA C/09/00456689.

¹⁵⁴ Namely Article 2 (Right to life) and Article 8 (Right to private and family life).

¹⁵⁵ Setzer, J. & Bynes, R., 'Global Trends in Climate Change Litigation: 2020 Snapshot' Grantham Research Institute on Climate Change and the Environment and the Center for Climate Change Economics and Policy, London School of Economics and Political Science (2020).

¹⁵⁶ *ibid.*

¹⁵⁷ *Mathur v Ontario*, (2020) ONSC 6918, para 2. Specifically, the applicants cited the violation of their section 7 (Life, Liberty, and Security) and section 15 (Equality) rights.

¹⁵⁸ *ibid.*, para 41.

¹⁵⁹ *ibid.*

¹⁶⁰ Note that this case is still in the process of litigation. More recently, the Superior Court of Justice dismissed the Ontario government's appeal on the motion to strike: see *Mathur v Her Majesty the Queen in Right of Ontario*, 2021 ONSC 1642. This decision is progressive when compared to the recent *Juliana* decision of the United States, where the Ninth Circuit Court dismissed a climate action instituted by 21 youths on the basis that the subject matter was non-justiciable and the claimants had no standing to institute the action: see *Juliana v United States* No. 18-36082 (9th Cir. 2020).

This enabled the claimants to succeed against the challenges inherent in legal standing, insufficiency in environmental legislation, and the causation and proof of harm. Thus, the judicial system is progressively proving to be an encouraging avenue for children and young people to seek redress of environmental harm.¹⁶¹ Although challenges to access courts remain, as exhibited in the next section, children can also actively assert their rights through climate activism and other non-judicial avenues.

C. Climate Activism and Non-Judicial Mechanisms

Although there can be a greater legitimacy and pressure on States through legal action, children and young people have also exercised their right to participation through other means of climate activism. The highly publicised international “Fridays for Future” protest movement, instigated by teenager Greta Thunberg in 2018, is one example of such action, where children have collectively raised their voice in the public sphere to demand climate policy changes from governments.¹⁶² This type of action is particularly meaningful because it provides for the active engagement of children who are actualising their right to be heard – in conjunction with the rights to free speech, peaceful assembly, and political participation – in support of a healthy environment. These movements have further spurred an increasing public

¹⁶¹ More recent legal actions brought by children indicate that international courts are becoming the chosen forum by which children seek legal remedies. In 2019, 15 youth petitioners from various parts of the world submitted a joint complaint to the CRC. In the petition, the complainants argued that climate change should be considered a child’s rights crisis, and that the respondent States must ‘ensure the child’s right to be heard and to express their views freely.’ : *Communication to the Committee on the Rights of the Child in the case of Chiara Sacchi et al. (Petitioners) v Argentina et al. (Respondents) Submitted under Article 5 of the Third Optional Protocol to the United Nations Convention on the Rights of the Child* (23 September 2019), para 330. In 2020, a similar case against 33 European States was brought before the European Court of Human Rights (ECtHR) by a group of 6 Portuguese youth, who alleged violations of their rights to life, respect for private life and family lives, and non-discrimination. In October 2020, the ECtHR approved the decision to fast-track the case based on the ‘importance and urgency of the issues raised,’ and, in February 2021, it dismissed the States’ requests to overturn this decision and to seek permission to argue the case’s inadmissibility, thereby showing judicial support for this type of claim: see further, ‘Portuguese Youth Climate Case v 33 Countries -- Portuguese young people versus 33 countries’ Global Legal Action Network (nd.).

¹⁶² Fridays for Future, ‘Who We Are’ (nd.).

recognition of the importance of the inclusion of children and young people at all levels of decision-making and policies on climate change¹⁶³.

Non-judicial mechanisms are similarly critical to realising the right to remedy by providing children with a means to complain outside of the courtroom when they believe that their rights have been violated – as individuals or group – so they can seek redress and halt the continuation of violations. According to the UNCRC, States are required to provide effective and child-sensitive mechanisms for children and young people to have their complaints heard by the relevant institutions¹⁶⁴. The CRC in General Comment No. 2 emphasises the mandatory nature of complaint mechanisms for National Human Rights Institutions (NHRIs), who must also have the authority to consider individual complaints/petitions and carry out investigations, including those submitted directly by, or on behalf of, children¹⁶⁵.

Non-judicial mechanisms can also be essential to holding the private sector accountable for environmental harm can also ensure children's right to a healthy environment.¹⁶⁶ The CRBP calls for businesses to establish child-sensitive non-judicial grievance mechanisms to provide remediation for any impacts on children's rights caused by businesses.¹⁶⁷ These mechanisms can provide fewer procedural challenges and offer flexibility in remedies that can be awarded, making them promising avenues for enforcing the environmental responsibilities of businesses.¹⁶⁸

¹⁶³ After many years of marginal participation in the UNFCCC, in 2009, children and young people were granted official constituency status under the title Youth Non-Governmental Organizations [YOUNGO]. Officially establishing YOUNGO has expanded youth participation beyond the UNFCCC to increased national and local engagement. See United Nations Climate Change 'YOUNGO: UNFCCC constituency of Youth Non-Governmental Organizations' (nd.).

¹⁶⁴ Committee on the Rights of the Child, 'General Comment No. 5 (2003): General Measures on the Implementation of the Rights of the Child' (27 November 2003) UN Doc CRC/GC/2003/5.

¹⁶⁵ Committee on the Rights of the Child, 'General Comment No. 2 (2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child' (15 November 2002) UN Doc CRC/GC/2002/2.

¹⁶⁶ Business & Human Rights Resource Centre, *In the Courtroom & Beyond: New Strategies to Overcome Inequality and Improve Access to Justice*, Corporate Legal Accountability Annual Briefing (29 February 2016).

¹⁶⁷ This in accordance with effectiveness criteria for non-judicial grievance mechanisms set out in UNGP Principle 31. See e.g., United Nations International Children's Emergency Fund, *The Global Compact*, and Save the Children, *Children's Rights and Business Principles* (2011), principle 1(b)(iii) (Appendix II).

¹⁶⁸ Business & Human Rights Resource Centre, *In the Courtroom & Beyond: New Strategies to Overcome Inequality and Improve Access to Justice*, Corporate Legal Accountability Annual Briefing (29 February 2016).

CONCLUSION

A healthy environment is essential for the full and effective enjoyment of human rights. While there is a tendency to separate “humanity” from “the environment”, the fact remains that we are a part of our environment, and depend on it for livelihoods, health, and well-being. Taking this a step further, we must recognise a healthy environment as a right in itself – one that is threatened by environmental degradation and climate change. Of all the populations who are in vulnerable situations, children are particularly vulnerable to environmental harm due to their continuing biological development and their lack of autonomy over decisions that shape the very environment they grow up in. Therefore, increased awareness among children – and society in general – of the grave impact of environment destruction¹⁶⁹ and the importance of a healthy environment to the fulfilment of human rights, must be emphasised and promoted.

While Scotland has taken the necessary first step through incorporation of the UNCRC, further measures are needed to ensure that children and young people are able to fulfil their right to a healthy environment. Best practices undertaken by other States in realising the right to a healthy environment can be instrumental in advising Scotland’s key institutional and civil society actors to strengthen legal practices regarding participation and access to justice for children, allowing Scotland to become a leading example in the promotion of children’s rights.

¹⁶⁹ Setzer, J. & Byres, R., ‘Global Trends in Climate Change Litigation: 2020 Snapshot’ Grantham Research Institute on Climate Change and the Environment and the Center for Climate Change Economics and Policy, London School of Economics and Political Science (2020).

APPENDIX I

Committee on the Rights of the Child, 'General Comment No. 12 (2009): The right of the child to be heard' (20 July 2009) UN Doc CRC/C/GC/12

134. All processes in which a child or children are heard and participate, must be:

(a) Transparent and informative – children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and their views to be given due weight, and how this participation will take place, its scope, purpose and potential impact;

(b) Voluntary – children should never be coerced into expressing views against their wishes and they should be informed that they can cease involvement at any stage;

(c) Respectful – children's views have to be treated with respect and they should be provided with opportunities to initiate ideas and activities. Adults working with children should acknowledge, respect and build on good examples of children's participation, for instance, in their contributions to the family, school, culture and the work environment. They also need an understanding of the socioeconomic, environmental and cultural context of children's lives. Persons and organizations working for and with children should also respect children's views with regard to participation in public events;

(d) Relevant – the issues on which children have the right to express their views must be of real relevance to their lives and enable them to draw on their knowledge, skills and abilities. In addition, space needs to be created to enable children to highlight and address the issues they themselves identify as relevant and important; CRC/C/GC/12 page 27

(e) Child-friendly – environments and working methods should be adapted to children's capacities. Adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views. Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities;

(f) Inclusive – participation must be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalized children, including both girls and boys, to be involved (see also para. 88 above). Children are not a homogenous group and participation needs to provide for equality of opportunity for all, without discrimination on any grounds. Programmes also need to ensure that they are culturally sensitive to children from all communities;

(g) Supported by training – adults need preparation, skills and support to facilitate children's participation effectively, to provide them, for example, with skills in listening, working jointly with children and engaging children effectively in accordance with their evolving capacities. Children themselves can be involved as trainers and facilitators on how to promote effective participation; they require capacity-building to strengthen their skills in, for example, effective participation

awareness of their rights, and training in organizing meetings, raising funds, dealing with the media, public speaking and advocacy;

(h) Safe and sensitive to risk – in certain situations, expression of views may involve risks. Adults have a responsibility towards the children with whom they work and must take every precaution to minimize the risk to children of violence, exploitation or any other negative consequence of their participation. Action necessary to provide appropriate protection will include the development of a clear child protection strategy which recognizes the particular risks faced by some groups of children, and the extra barriers they face in obtaining help. Children must be aware of their right to be protected from harm and know where to go for help if needed. Investment in working with families and communities is important in order to build understanding of the value and implications of participation, and to minimize the risks to which children may otherwise be exposed;

(i) Accountable – a commitment to follow-up and evaluation is essential. For example, in any research or consultative process, children must be informed as to how their views have been interpreted and used and, where necessary, provided with the opportunity to challenge and influence the analysis of the findings. Children are also entitled to be provided with clear feedback on how their participation has influenced any outcomes. Wherever appropriate, children should be given the opportunity to participate in follow-up processes or activities. Monitoring and evaluation of children's participation needs to be undertaken, where possible, with children themselves.

APPENDIX II

United Nations International Children's Emergency Fund, The Global Compact, and Save the Children, *Children's Rights and Business Principles* (2011)

Principle 1: ALL BUSINESS SHOULD: Meet their responsibility to respect children's rights and commit to supporting the human rights of children

Actions for all business includes:

[...]

b) Meeting the responsibility to respect children's rights

This requires avoiding the infringement of children's rights and addressing any adverse impact on children's rights with which the business is involved. The corporate responsibility to respect applies to the business's own activities and to its *business relationships*, including but not limited to those activities and relationships identified in subsequent Principles. In order to meet this responsibility, all business should put in place appropriate policies and processes, as set out in the Guiding Principles on Business and Human Rights endorsed by the United Nations Human Rights Council. These include:

[...]

- ii. **Human rights due diligence:** a business's ongoing processes for assessing its actual and potential human rights impact, including on children's rights, integrating and acting upon its findings, tracking its responses and communicating how its impact is addressed. *Human rights due diligence* should cover any adverse impact that the business may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by a *business relationship*. To carry out *human rights due diligence*, all business should:
 - Identify and assess any actual or potential adverse impact on children's rights. This should draw on human rights expertise and involve meaningful consultation with children and other potentially affected groups and relevant stakeholders. It should take into account that girls and boys may face different risks.
 - Integrate the findings from their impact assessments across relevant internal functions and processes and take appropriate action (as defined in the Guiding Principles). Where a business causes or contributes to an adverse impact on children's rights, or where it may do so, it should take the necessary steps to cease or prevent the activity, or its contribution to it, and use its *leverage* to mitigate any remaining impact. Where a business is linked to an adverse impact by a *business relationship*, it should use its *leverage* and consider other relevant factors in determining the appropriate action to take.

- Monitor and track the effectiveness of the business's responses in order to verify whether an adverse impact on children's rights is being addressed, using appropriate qualitative and quantitative indicators and drawing on feedback from internal and external sources, including affected children, families and other stakeholders. The business should consider using tools such as performance contracts and reviews, surveys and audits (self-assessments or independent audits) on a periodic basis.
 - Be prepared to communicate externally on their efforts to address the business impact on children's rights in a form and with the frequency that reflect such an impact and that is accessible to its intended audiences. The business should provide sufficient information to evaluate the adequacy of its responses. Such communication should not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.
- iii. **Child-sensitive processes to enable remediation:** the processes to enable remediation of any adverse impact on children's rights that the business causes or contributes to. Where a business identifies that it has caused or contributed to an adverse impact on human rights, it should provide for or cooperate in their *remediation* through legitimate processes, including effective operational level grievance mechanisms or judicial mechanisms, as appropriate. Operational level mechanisms should be accessible to girls and boys, their families and those who represent their interests, and meet the effectiveness criteria for non-judicial grievance mechanisms set out in Principle 31 of the Guiding Principles on Business and Human Rights.

Principle 7: ALL BUSINESS SHOULD: Respect and support children's rights in relation to the environment and to land acquisition and use

The corporate responsibility to respect includes:

- a) Respecting children's rights in relation to the environment
 - i. When planning and implementing environmental and resource-use strategies, ensure that business operations do not adversely affect children's rights, including through damage to the environment or reducing access to natural resources.
 - ii. Ensure the rights of children, their families and communities are addressed in contingency plans and remediation for environmental and health damage from business operations, including accidents.
- b) Respecting children's rights as an integral part of human rights considerations when acquiring or using land for business operations
 - i. Where possible, avoid or minimize displacement of communities affected by land acquisition or land use for business purposes. Engage in meaningful, informed consultation with potentially affected communities to ensure that any adverse impact on children's rights is

identified and addressed and that communities participate actively in and contribute to decision-making on matters that affect them directly. Seeking the free, prior and informed consent of indigenous peoples is specifically required for any project that affects their communities, and it is a desirable goal for any community impacted by a company's use or acquisition of land.

- ii. Respect children's rights – especially their right to education, protection, health, adequate food and adequate standard of living and participation – when planning and carrying out resettlement and providing for compensation.

The corporate commitment to support includes:

- c) Supporting children's rights in relation to the environment where future generations will live and grow. Take measures to progressively reduce the emission of greenhouse gases from company operations and promote resource use that is sustainable. Recognize that these actions and other initiatives to better the environment will impact future generations. Identify opportunities to prevent and mitigate disaster risk and support communities in finding ways to adapt to the consequences of climate change.

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