

IN THE COURT OF APPEAL FOR SASKATCHEWAN

**IN THE MATTER OF THE GREENHOUSE GAS POLLUTION PRICING ACT,  
BILL C-74, PART V**

**AND IN THE MATTER OF A REFERENCE BY THE LIEUTENANT GOVERNOR IN  
COUNCIL TO THE COURT OF APPEAL UNDER THE *CONSTITUTIONAL QUESTIONS ACT*,  
2012, SS 2012, c C-29.01**

BETWEEN

**ATTORNEY GENERAL OF SASKATCHEWAN**

Party pursuant to s. 4 of  
*The Constitutional Questions Act*, 2012

and

**ATTORNEY GENERAL OF CANADA**

Party pursuant to s. 5(2) of  
*The Constitutional Questions Act*, 2012

and

**ATTORNEY GENERAL OF ONTARIO**

Party pursuant to s. 6 of  
*The Constitutional Questions Act*, 2012

and

**INTERGENERATIONAL CLIMATE COALLITION**

Proposed Intervenor

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**AFFIDAVIT OF KATHERINE VANDERGRIFT**  
**Sworn November 29, 2018**

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COURT OF APPEAL FOR SASKATCHEWAN

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**AFFIDAVIT OF KATHERINE VANDERGRIFT**

I, KATHERINE VANDERGRIFT, of 937 Alpine Avenue, Ottawa, Ontario, K2B 5R9, AFFIRM THAT:

1. I have personal knowledge of the facts and matters deposed to in this affidavit except where the same are stated to be on information and belief, in which case I believe those facts to be true.
2. I am the Chair of the Board of Directors for the Canadian Coalition for the Rights of Children (the "CCRC"), a non-profit corporation under the *Canada Corporations Act*. I have served as the Chair of the CCRC since November 2016. I also previously served as Chair of the CCRC from 2006 to 2012.

3. I am a policy analyst with more than 20 years of experience working for children's rights internationally and in Canada. Currently, I volunteer almost full-time for the CCRC and do some work as a consultant. Previously, I worked in government and non-governmental organizations as a policy analyst, including as Policy Director for World Vision Canada from 1998 to 2006.
4. In 2009, I received a Master's degree in Public Ethics from St. Paul's University and University of Ottawa (joint program) and wrote my Master's thesis on conceptual understandings of children's rights and the United Nations Convention on the Rights of the Child (the "**Convention**"). Attached as Exhibit "**A**" to this affidavit is a copy of the Convention.
5. In 2008, I received the Aldo Farina Award for Children's Rights Advocacy from the International Board of UNICEF.

**The Canadian Coalition for the Rights of Children**

6. The CCRC was formed in 1989, following Canada's adoption of the Convention. The CCRC's purpose is to inform the Canadian public about the Convention and provide a forum for civil society participation in implementation of the Convention.
7. The membership of the CCRC is composed of national organizations that work with children, some local children's rights organizations, and individuals with expertise and interest in implementation of the Convention in Canada. CCRC's member organizations include:
  - (a) UNICEF Canada;
  - (b) the Justice for Children and Youth Foundation;
  - (c) the Child Welfare League of Canada; and
  - (d) Plan International - Canada.

8. The CCRC board, elected at each Annual General Meeting, is composed of staff persons from children's rights organizations and professionals with experience and expertise in children's rights.
9. In all of its work, the CCRC draws upon the expertise of its member organizations and board members, including child protection practitioners, lawyers, and academic researchers.
10. The CCRC has engaged and continues to engage in a wide range of activities to increase awareness and involvement in the implementation of the Convention, including:
  - (a) co-hosting the 2009 North American regional conference for the Global Study on Violence Against Children;
  - (b) developing and distributing educational materials on the Convention, such as youth-friendly versions of the Convention, booklets explaining specific provisions of the Convention, and reports on various aspects of the Convention;
  - (c) organizing national, multi-disciplinary conferences, such as on *The Best Interests of the Child: Its Meaning and Application in Canada* (2009) and *Children's Rights Impact Assessments: Making Children Visible in Public Policy* (2013);
  - (d) facilitating the participation of children from all parts of Canada in national and international events, such as the World Summit for Children, the Earth Summit and the United Nations Special Session for Children;
  - (e) hosting a forum in 2008 for young people to dialogue with members of parliament on implementation of the Convention in Canada;
  - (f) providing policy advice at the national level for specific legislation that affects children, for Canada's participation in the UN Special Session for Children, for Canada's Action Plan entitled "A Canada Fit for Children," and for parliamentary committees studying issues related to children's rights; and

- (g) providing an avenue for Canadian civil society organizations to participate in the regular five-year reviews of Canada's implementation of the Convention before the UN Committee on the Rights of the Child.
11. Board members and other members of the CCRC have participated in the development of international guidelines for implementation of the Convention, including
- (a) the General Comment on the Rights of Indigenous Children, which addresses the relationship between collective rights, rights to cultural identity, and the individual rights of a child, within the framework of the Convention; and
  - (b) "General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)," which concerns children's right to health under Article 24 of the Convention ("**General Comment No.15**").
12. The CCRC also has intervened and otherwise participated in prominent reference cases concerning the rights of children, including:
- (a) *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, regarding the duty of a state to protect the rights and best interests of a Canadian child being exploited through use as a child soldier; and
  - (b) *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588, regarding the state's obligation to protect Canadian persons under the age of 18 in relation to the practice of polygamy.

### **Children's Rights, the Environment, and Climate Change**

13. Many of the rights protected by the Convention depend on a healthy environment, including the rights:
- (a) to life, survival and maximum development (Article 6);
  - (b) to the enjoyment of the highest attainable standard of health (Article 24);

- (c) to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27); and
  - (d) to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (Article 31).
14. In January 2018, the Special Rapporteur on human rights and the environment to the United Nations General Assembly Human Rights Council (the “**Special Rapporteur**”) released the “Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.” That report focuses on the way that environmental harm prevents children from enjoying their human rights and the obligations of states to protect children from such harm. Among other things, the Special Rapporteur observed that:
- (a) no group is more vulnerable to environmental harm than children, and environmental harm has especially severe effects on children under the age of five (para. 15);
  - (b) a healthy environment is necessary for children’s enjoyment of the rights to life, development and health (para. 33); and
  - (c) the cumulative effects of long-term environmental harm, such as climate change and the loss of biodiversity, increase over time, so that decisions taken today will affect children much more than adults (para. 57).

Attached as Exhibit “**B**” to this affidavit is a copy of the Special Rapporteur’s report.

15. The UN Committee on the Rights of the Child (the “**Committee**”) was established under the Convention to examine the progress made by states in realizing the obligations set out in the Convention and to provide guidance to states through General Comments and General Days of Discussion.
16. In September 2016, the Committee held a General Day of Discussion on Children’s Rights and the Environment. More than 250 experts, academics, child activists, and representatives of the United Nations and non-governmental organizations met to discuss

and share knowledge and expertise on the environment and children's rights. In its report on that General Day of Discussion, the Committee stated, among other things:

- (a) "Environmental damage is a pressing human rights challenge, which has an impact on children's lives today and in the future" (p. 4);
- (b) "Climate change poses an immediate and far-reaching threat to the enjoyment of many of the rights enshrined the [Convention]" (pp. 4-5); and
- (c) "Children's rights have a key role to play in highlighting the importance of intergenerational responsibility and prudence in protecting the environment, healthy ecosystems and managing natural resources" (p. 11).

Attached as Exhibit "C" to this affidavit is a copy of the Committee's Report on the 2016 Day of General Discussion.

17. In December 2012, the Committee issued its "Concluding observations on the combined third and fourth periodic report of Canada," which included recommendations that
- (a) Canada ensure "The monitoring of implementation by companies at home and abroad of international and national environmental and health and human rights standards and that appropriate sanctions and remedies are provided when violations occur with a particular focus on the impact on children" (para. 29(b)); and
  - (b) "the views of the child be a requirement for all official decision-making processes that relate to children, including custody cases, child welfare decisions, criminal justice, immigration, and the environment" (para. 37).

Attached as Exhibit "D" to this affidavit is a copy of those Concluding Observations.

18. The CCRC recognizes the connection between children's rights and the environment and has worked to increase awareness and engagement on this issue.
19. Since receiving the Concluding Observations in 2012, the CCRC has consistently advocated for an action plan to respond to these and other recommendations. Among

other things, the CCRC participated in the public review process on Bill C-69 (An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts) and made a submission on Bill C-69 regarding youth voice in the environmental assessment process. Attached as Exhibit “E” to this affidavit is a copy of that submission.

20. Members of the CCRC also facilitated and participated in four youth events across Canada on the theme of children’s rights and the environment called “Shaking the Movers.” The events were sponsored by the Children’s Rights Academic Network and the Landon Pearson Resource Center for the Study of Childhood and Children’s Rights (a CCRC member). At each session, young people identified climate change and its impacts on their right to health and development as a high priority concern.
21. Article 24 of the Convention sets out the right of the child to the highest attainable standard of health. It reads as follows:

**Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
  - a. To diminish infant and child mortality;
  - b. To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - c. To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
  - d. To ensure appropriate pre-natal and post-natal health care for mothers;

- e. To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
  - f. To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
  4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

22. In 2013, the Committee issued General Comment No. 15. That General Comment elaborates the right to the enjoyment of the highest attainable standard of health and provides guidance to states on how to implement it. Among other things, the Committee:

- (a) acknowledges “There is also a growing understanding of the impact of climate change and rapid urbanization on children’s health” (para. 5); and
- (b) “draws attention to the relevance of the environment, beyond environmental pollution, to children’s health. Environmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children’s health and exacerbates health disparities. States should, therefore, put children’s health concerns at the centre of their climate change adaptation and mitigation strategies” (para. 50).

Attached as Exhibit “F” to this affidavit is a copy of General Comment No. 15.

23. In May 2017, the Office of the United Nations High Commissioner for Human Rights released an “Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child.” That study found, among other things:

- (a) all children are exceptionally vulnerable to the negative impacts of climate change, including the increasing frequency and intensity of natural disasters, changing precipitation patterns, food and water shortages, and the increased transmission of communicable diseases (para. 50);
- (b) a child rights-based approach to climate change requires that children should not be treated as passive victims of events beyond their influence, but rather as agents of change whose preferences and choices are fairly reflected in policy design and implementation (para. 40); and
- (c) the principle of intergenerational equity underlying international frameworks, such as the Paris Agreement, places a duty on current generations to act as responsible stewards of the planet and ensure the rights of future generations to meet their developmental and environmental needs (para. 35).

Attached as Exhibit “G” to this affidavit is a copy of that analytical study.

24. The CCRC agrees that climate change is a fundamental threat to children’s health, and therefore is a serious threat to the rights protected by the Convention.

25. The CCRC is joining Generation Squeeze, the Canadian Association of Physicians for the Environment and other members of the intergenerational climate coalition in seeking leave to intervene in this proceeding and in supporting the constitutionality of the *Greenhouse Gas Pollution Pricing Act*.

SWORN (OR AFFIRMED) BEFORE ME at the )  
City of Ottawa, in the Province of )  
Ontario, on the 24<sup>th</sup> day of November, 2018. )

[Signature] )  
A Commissioner for taking Affidavits for )  
Ontario )

[Signature] )  
KATHERINE VANDERGRIET )

Notary Public  
for Ontario

Robin D. MacKay  
Barrister, Solicitor & Notary Public  
Suite 201, 1580 Menvale Road  
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This is Exhibit "A" referred to in the Affidavit  
of Katherine Vandergrift, sworn before me at  
Ottawa this

29th

28 day of November, 2018

.....  
A Commissioner for taking Affidavits within

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## Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly  
resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

### Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

## **PART I**

### **Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### **Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### **Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### **Article 6**

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

#### **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

#### **Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

#### **Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

#### **Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their

own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### **Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### **Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### **Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### **Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### **Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

#### **Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

#### **Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

#### **Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### **Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

#### **Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### **Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

#### **Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
  - (a) To diminish infant and child mortality;
  - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
  - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
  - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
  - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

**Article 25**

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

**Article 26**

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

**Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

**Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 29**

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### **Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

#### **Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

#### **Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

#### **Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

#### **Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

#### **Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

#### **Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

#### **Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

#### **Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

#### **Article 39**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

#### **Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

#### **Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

### **PART II**

#### **Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

#### **Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

#### **Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

#### **Article 45**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### PART III

#### Article 46

The present Convention shall be open for signature by all States.

#### Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

#### Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any

amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

#### **Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

#### **Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

#### **Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

#### **Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.



# General Assembly

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## Human Rights Council

Thirty-seventh session

26 February–23 March 2018

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

#### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, on the relationship between children's rights and environmental protection.

This is Exhibit "B" referred to in the  
Affidavit of Katherine Vandergrift, sworn  
before me at Ottawa this  
29th day of November, 2018.

.....  
A Commissioner for taking Affidavits within

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**Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

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## I. Introduction

1. After reviewing the activities of the Special Rapporteur in 2017, the present report focuses on the rights of children in relation to the environment, addressing the ways that environmental harm prevents children from enjoying their human rights and the obligations that States have to protect children from such harm.

2. The Special Rapporteur held an expert meeting and a public consultation on 17–18 October on “framework principles” on human rights and the environment, which are the subject of a separate report to the thirty-seventh session of the Council (A/HRC/37/59). He carried out two country visits, to Uruguay in April and to Mongolia in September, which are also the subject of separate reports (A/HRC/37/58/Add.1 and Add.2). He sent or joined in 27 communications to States regarding alleged violations of human rights obligations relating to the environment. He worked with the United Nations Environment Programme and other partners, including the Global Judicial Institute for the Environment, to conduct a regional workshop for judges on rights-based approaches to environmental issues, which was held in Brasilia on 22–23 May. A regional workshop for Asian judges is expected to take place in Pakistan in February 2018.

3. In accordance with the encouragement of the Council in its resolution 28/11 to continue to contribute to and participate in, where appropriate, intergovernmental conferences and meetings relevant to the mandate, the Special Rapporteur spoke on 31 July to the negotiators of a regional agreement on implementation of principle 10 of the Rio Declaration on Environment and Development, on rights of information, participation and remedy. He presented a statement to the sixth meeting of the parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) on 14 September, and on 4–5 December, he participated in the third session of the United Nations Environment Assembly, in Nairobi. He also spoke at the World Bank on 4 May, and at the Swedish International Development Cooperation Agency on 19 October.

4. The Special Rapporteur continues to draw attention to threats facing environmental defenders around the world. He participated in conferences on environmental defenders at the University of Oxford, in the United Kingdom of Great Britain and Northern Ireland, on 20–21 June and in Mexico City on 6 November. Together with the Universal Rights Group, he organized a meeting of environmental defenders in Bogotá on 8–9 November, at which the Spanish-language version of a web portal for environmental defenders, environment-rights.org, was launched. He also supported a new environmental rights initiative at the United Nations Environment Programme, which will, among other things, try to address threats facing individuals and groups working to protect the environment.

5. In preparation for the present report, the Special Rapporteur participated in the day of general discussion of the Committee on the Rights of the Child on children’s rights and the environment, on 23 September 2016. He held an expert meeting and a public consultation on 22–23 June 2017, and sent a questionnaire to States and other interested stakeholders, which elicited over 40 responses. He also examined statements and reports of human rights mechanisms and international organizations, as well as other sources.

6. Section II of the present report reviews the increasing attention being paid to the relationship of the rights of children to environmental harm. Section III describes the severe effects of environmental harm on the rights of children. Section IV outlines the human rights obligations relating to children’s rights in the environmental context. Section V addresses the relationship of future generations and children’s rights. Section VI concludes with recommendations aimed at protecting the rights of children from environmental harm.

## II. International attention to the relationship between children’s rights and the environment

7. The international community has long recognized that environmental harm interferes with the full enjoyment of the rights of children. The Convention on the Rights of the Child, adopted in 1989, requires its parties to pursue full implementation of children’s right to

health by taking measures, among others, to combat disease and malnutrition through “the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution” (art. 24 (2) (c)).

8. In the World Declaration on the Survival, Protection and Development of Children, adopted at the World Summit for Children in 1990, States recognized that millions of children suffer from environmental degradation, and committed to work for common measures for the protection of the environment, at all levels, so that all children can enjoy a safer and healthier future (see A/45/625, annex, paras. 5 and 20 (9)). The World Programme of Action for Youth to the Year 2000 and Beyond, adopted in 1995, includes specific environmental initiatives and states that implementation of the Programme of Action requires the full enjoyment by young people of all human rights and fundamental freedoms (see General Assembly resolution 50/81, annex, para. 20). States reiterated the importance of environmental protection in the document entitled “A world fit for children”, adopted in 2002, one of whose ten principles and objectives is to “protect the Earth for children” (see General Assembly resolution S-27/2, annex, para. 7).

9. At the national level, many States reported to the Special Rapporteur that they have taken innovative steps to recognize and protect children’s rights to live in a healthy environment. For example, the Plurinational State of Bolivia, El Salvador, Mexico and Paraguay have introduced national legislation that recognizes the right of children to a healthy, ecological and sustainable environment. Denmark, Saudi Arabia and Slovenia have adopted measures to protect children’s health from environmental degradation and chemicals. Serbia is using the media to raise children’s awareness about environmental issues, and Germany is promoting their participation in environmental initiatives. Many States, including Australia, Azerbaijan, El Salvador, France, Georgia, the State of Palestine, the Philippines and Switzerland, report that they have introduced measures to improve children’s environmental education. Oman and Qatar have each designated a “national day of the environment” through which they raise awareness about the environment among children and promote children’s participation in environmental activities.<sup>1</sup>

10. The Human Rights Council has often drawn attention to the effects of climate change on the rights of children. In its resolution 32/33, it recognized that children are among the most vulnerable to climate change, which may have a serious impact on their enjoyment of the highest attainable standard of physical and mental health, access to education, adequate food, adequate housing, safe drinking water and sanitation. In its resolution 35/20, it emphasized that climate change affects some children more than others, including children with disabilities, children on the move, children living in poverty, children separated from their families and indigenous children. In resolution 32/33, the Council called on States to continue and enhance international cooperation and assistance for adaptation measures to help developing countries, especially those that are particularly vulnerable to the adverse effects of climate change and persons in vulnerable situations, including children most at risk.

11. In recent years, human rights experts have begun to examine more closely the effect of environmental harm on the enjoyment of children’s rights. In 2015, the United Nations Children’s Fund (UNICEF) published a report on the effects of climate change on children.<sup>2</sup> In August 2016, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, issued a report describing the “silent pandemic” of disability and disease associated with childhood exposure to toxics and pollution, and explaining the obligations of States and the responsibilities of business enterprises to protect against such exposure (A/HRC/33/41). At the request of the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued a report in May 2017 on the relationship between climate change and the rights of the child (A/HRC/35/13).

<sup>1</sup> All of the submissions are available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/RepliesEnvironmentAndRightsChild.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/RepliesEnvironmentAndRightsChild.aspx).

<sup>2</sup> UNICEF, *Unless we act now: The impact of climate change on children* (November 2015).

12. The Committee on the Rights of the Child has also given increasing attention to the relationship of environmental protection and children's rights. The Committee often addresses environmental concerns in its review of country reports under the Convention.<sup>3</sup> At its day of general discussion on 23 September 2016, the Committee brought together over 250 participants, including children, representatives of Governments, civil society organizations, United Nations agencies and academics, to examine the effects of environmental harm on the rights of children, both directly and through aggravating underlying causes of serious violations through conflict over limited resources, increasing inequalities, forced migration and even early marriage.<sup>4</sup>

13. The Committee on the Rights of the Child, UNICEF, other special procedures, States and civil society organizations, among others, continue to study and clarify the relationship of children's rights and the environment. The Special Rapporteur hopes that the present report will contribute to that ongoing discussion by providing an overview of the principal effects of environmental harm on the rights of children and outlining the corresponding obligations of States.

### III. The effects of environmental harm on the rights of children

14. This section describes first the effects of environmental harm on children's well-being, and then how those effects interfere with the enjoyment of their human rights, including their rights to life, health and development, to an adequate standard of living and to play and recreation.

#### A. The effects of environmental harm on children

15. Taken as a whole, no group is more vulnerable to environmental harm than children (persons under the age of 18), who make up 30 per cent of the world's population. Environmental harm has especially severe effects on children under the age of 5. Of the 5.9 million deaths of children under the age of 5 in 2015, the World Health Organization (WHO) estimates that more than one quarter — more than 1.5 million deaths — could have been prevented through the reduction of environmental risks.<sup>5</sup> In addition, one quarter of the total disease burden in children under the age of 5 is attributed to environmental exposures.<sup>6</sup> Childhood exposure to pollutants and other toxic substances also contributes to disabilities, diseases and premature mortality in adulthood.

##### 1. Air pollution

16. Air pollution causes approximately 600,000 deaths of children under the age of 5 every year.<sup>7</sup> Countless more children suffer disease and disability, often with lifelong effects. Children are more susceptible to air pollution than adults for many reasons, including that their smaller respiratory airways are more easily blocked by infections, and that they breathe more quickly and take in more air per unit of body weight.<sup>8</sup> Because their

<sup>3</sup> The Special Rapporteur compiled statements of the Committee on the Rights of the Child on environmental issues in "Mapping human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: individual report on the United Nations Convention on the Rights of the Child" (December 2013). Available at <http://srenvironment.org/mapping-report-2014-2/>.

<sup>4</sup> Committee on the Rights of the Child, "Report of the 2016 day of general discussion: children's rights and the environment", p. 5. Available from [www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx](http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx).

<sup>5</sup> WHO, "Don't pollute my future! The impact of the environment on children's health" (Geneva, 2017), p. 1.

<sup>6</sup> *Ibid.*, p. 22.

<sup>7</sup> *Ibid.*, p. 3. Roughly 500,000 of these deaths are attributed to household air pollution and 100,000 to ambient air pollution. See UNICEF, *Clear the air for children: The impact of air pollution on children* (2016), p. 24.

<sup>8</sup> UNICEF, *Clear the air for children*, pp. 8 and 40.

immune systems are still developing, they are at higher risk of respiratory infections and have less ability to combat them.<sup>9</sup>

17. Ambient air pollution mainly results from factories and vehicles, and household air pollution comes primarily from the use of wood, coal and other solid fuels for cooking and heating. The vast majority of children — about 2 billion — live in areas that exceed the WHO ambient standard for particulate matter, and 300 million children live in areas whose ambient air pollution exceeds international standards by six times or more.<sup>10</sup> Over 1 billion children around the world live in homes that use solid fuels for cooking and heating.<sup>11</sup> WHO has estimated that together, ambient and household air pollution cause more than one half of all lower respiratory infections, such as pneumonia and bronchitis, in children under 5 in low- and middle-income countries, and that lower respiratory infections accounted for 15.5 per cent of deaths of all children under the age of 5 in 2015.<sup>12</sup>

18. Children who survive early exposure to air pollution can still suffer from it throughout their lives: it can disrupt their physical and cognitive development and make them more prone to lung cancer, asthma, other respiratory diseases and cardiovascular diseases.<sup>13</sup> The harm from air pollution begins before birth. As the Special Rapporteur on hazardous substances and wastes has said, children are often born “pre-polluted” because of their mothers’ exposure to pollutants during pregnancy, which is associated with preterm delivery, lower birthweight and early fetal loss (see A/HRC/33/41, paras. 5 and 16).<sup>14</sup>

## 2. Water pollution

19. Water pollution resulting primarily from unsafe sanitation practices contributes to diarrhoeal diseases that cause more than 350,000 deaths a year of children under 5 years old, and another 80,000 deaths of children aged 5 to 14.<sup>15</sup> Water pollution also contributes to intestinal and parasitic infections such as schistosomiasis, which gravely affect the physical and cognitive development of children.<sup>16</sup> These infections, as well as diarrhoea, impair the proper functioning of the digestive system and prevent the absorption of nutrients essential for growth and development.<sup>17</sup> Lack of access to safe water also increases the incidence of other diseases, including trachoma, the main preventable cause of blindness.<sup>18</sup> More generally, unsafe water contributes to food insecurity, malnutrition and stunting of children.<sup>19</sup> UNICEF stated in 2013 that approximately 165 million children under 5 suffer from stunting as a result of inadequate nutrition and unhealthy water and sanitation.<sup>20</sup> Stunted children are not only shorter than they should be for their age; they suffer harm throughout their lives, including weaker immune systems and reduced brain development.

20. Children are particularly at risk from water pollution, like air pollution, because their bodies are still developing. In addition, they drink more water than adults in relation to their body weight, and they absorb a greater proportion of some waterborne chemicals.<sup>21</sup>

<sup>9</sup> Ibid., pp. 9 and 40.

<sup>10</sup> Ibid., pp. 8 and 60.

<sup>11</sup> Ibid., p. 9.

<sup>12</sup> WHO, “Don’t pollute my future!”, pp. 2–3.

<sup>13</sup> UNICEF, *Clear the air for children*, pp. 29–32; WHO, “Don’t pollute my future!”, p. 8.

<sup>14</sup> See also UNICEF, *Clear the air for children*, pp. 8 and 43–44; WHO, *Inheriting a sustainable world? Atlas on children’s health and the environment* (Geneva, 2017), p. 49.

<sup>15</sup> WHO, “Don’t pollute my future!”, pp. 3 and 13.

<sup>16</sup> Ibid., p. 5.

<sup>17</sup> WHO, *Inheriting a sustainable world?*, p. 25.

<sup>18</sup> WHO, *Preventing disease through healthy environments: A global assessment of the burden of disease from environmental risks* (Geneva, 2016), p. 22; WHO, *Inheriting a sustainable world?*, p. 26.

<sup>19</sup> WHO, “Don’t pollute my future!”, p. 6; WHO, *Inheriting a sustainable world?*, pp. 10–11.

<sup>20</sup> UNICEF, “Sustainable development starts and ends with safe, healthy and well-educated children” (May 2013), p. 8.

<sup>21</sup> WHO, *Inheriting a sustainable world?*, p. 25.

Children spend more time than adults playing in water bodies that are unclean, and they may be less able than adults to recognize or act upon environmental risks.<sup>22</sup>

21. Between 1990 and 2015, as the number of people without access to an improved source of water fell from over 2 billion to approximately 660 million, the number of diarrhoeal deaths of children under 5 years more than halved.<sup>23</sup> Some waterborne diseases, such as guinea worm, have been nearly eradicated. But much more remains to be done. At least one in every four people around the world still drinks water that is faecally contaminated.<sup>24</sup> Proper management of water sources is also critical to reducing vector-borne diseases such as malaria. Although the number of malarial deaths of children under 5 decreased by more than one half between 2000 and 2015, malaria still caused approximately 300,000 deaths in 2015, accounting for one in every ten child deaths in sub-Saharan Africa.<sup>25</sup>

### 3. Climate change

22. The Executive Director of UNICEF has stated that “there may be no greater, growing threat facing the world’s children — and their children — than climate change”.<sup>26</sup> As explained in the 2017 OHCHR report (A/HRC/35/13), climate change contributes to extreme weather events, water scarcity and food insecurity, air pollution and vector-borne and infectious diseases, all of which already have severe effects on children.

23. For example, climate change increases the frequency and severity of droughts, and approximately 160 million children already live in areas of high or extremely high drought severity.<sup>27</sup> Because children need to consume more food and water per unit of body weight than adults, they are more vulnerable to the deprivation of food and water, which can lead to irreversible stunting.<sup>28</sup> Water scarcity leads to the use of unsafe water, which in turn contributes to communicable diseases.<sup>29</sup>

24. Climate change also contributes to severe storms and flooding. More than 500 million children live in areas, mostly in Asia, that have extremely high likelihoods of flooding, and approximately 115 million live in zones of high or extremely high risk of tropical cyclones.<sup>30</sup> Beyond the immediate dangers of death and injury, severe storms and floods cause a cascade of additional harms, including compromising safe water supplies, damaging sanitation facilities and destroying housing. Like droughts, floods can cause massive displacement. Children are particularly vulnerable during displacements, when the loss of connections to families, communities and protective services can increase their vulnerability to abuses including child labour and trafficking.<sup>31</sup>

25. Climate change has many other harmful effects on human health, including increasing the frequency and severity of heatwaves, compounding the toxicity of fossil-fuel pollutants such as ozone and contributing to wildfires.<sup>32</sup> Children are, again, more vulnerable to all of these effects. For example, UNICEF has indicated that “infants and small children are more likely to die or suffer from heatstroke because they are unable or lack agency to regulate their body temperature and control their surrounding environment”.<sup>33</sup> Over the longer term, rising temperatures and changing rainfall patterns are likely to exacerbate the spread of vector-borne diseases such as malaria, dengue and cholera,<sup>34</sup> and contribute to food scarcity and undernutrition. WHO estimates that by 2030,

<sup>22</sup> *Ibid.*, pp. 25-26.

<sup>23</sup> *Ibid.*, p. 24.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, p. 38.

<sup>26</sup> UNICEF, *Unless we act now*, p. 6.

<sup>27</sup> *Ibid.*, p. 22.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, pp. 30 and 34.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, pp. 40 and 44.

<sup>33</sup> *Ibid.*, p. 40.

<sup>34</sup> *Ibid.*, pp. 48-52.

the effects of climate change on nutrition will result in an additional 7.5 million children who are moderately or severely stunted, and approximately 100,000 additional deaths.<sup>35</sup>

26. The ramifications of climate change for children go far beyond its effects on their health, as disastrous as those may be. As OHCHR has stated, “climate change heightens existing social and economic inequalities, intensifies poverty and reverses progress towards improvement in children’s well-being” (see A/HRC/35/13, para. 50). To give just one example, climate change-induced food insecurity is already increasing the number of marriages of girl children, who are pressured to marry to reduce burdens on their families of origin.<sup>36</sup>

#### 4. Chemicals, toxic substances and waste

27. The 2016 report of the Special Rapporteur on hazardous substances and wastes describes the harms to children from exposure to chemicals, toxic substances and waste. He states that the number of deaths from air and water pollution is only one part of a silent pandemic of disability and disease, much of which may not manifest for years or decades (see A/HRC/33/41, para. 4). The rapid growth of hazardous chemicals in the environment has occurred together with increasing incidence of cancer, diabetes and asthma, among other diseases. More than 800 chemicals have been identified as known or suspected disruptors of the normal functioning of human and/or animal endocrine systems, and humans are most sensitive to endocrine disruption during periods of development, including early childhood and puberty.<sup>37</sup> Children begin their exposure to toxic substances before birth; hundreds of hazardous chemicals have been found in children as a result of their mother’s exposure, resulting in the children being born “pre-polluted” (see A/HRC/33/41, para. 5). He emphasizes that children in low-income, minority, indigenous and marginalized communities are at more risk, as exposure levels in such communities are often higher and are exacerbated by malnutrition, with the adverse effects inadequately monitored (ibid., para. 6).

28. Although the connection between exposure to a particular toxic substance and the harm to an individual is not always traceable, in large part because information about exposure to and effects of these substances is typically not required or provided, some effects are clear. For example, lead poisoning causes irreversible intellectual disabilities in 600,000 children annually (ibid., para. 9). Artisanal and small-scale mining, in which approximately 1 million children participate, commonly employs mercury, which causes lifelong harm to the developing nervous systems of children, as well as contributing to cardiovascular and other diseases.<sup>38</sup> Discarded mobile telephones and other electronic products are often shipped from high-income to lower-income countries. Children are often employed to extract valuable elements from these products, without protective equipment, exposing themselves to toxic substances such as lead, mercury, cadmium, chromium and arsenic.<sup>39</sup>

29. Another increasing source of harm is the use of pesticides, the subject of a recent joint report by the Special Rapporteur on hazardous substances and wastes and the Special Rapporteur on the right to food. They state that exposure to even low levels of pesticides, for example through wind drift or residues on food, may be very damaging to children’s health, disrupting their mental and physiological growth and possibly leading to a lifetime of diseases and disorders (see A/HRC/34/48, para. 24). The effects of pesticides and of chemicals ingested other ways, including through food, may include asthma, cancer and neurological damage.<sup>40</sup>

<sup>35</sup> WHO, *Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s* (Geneva, 2014), pp. 80 and 89.

<sup>36</sup> Gethin Chamberlain, “Why climate change is creating a new generation of child brides”, *Guardian*, 26 November 2017; Human Rights Watch, “Marry before your house is swept away: child marriage in Bangladesh”, 9 June 2015.

<sup>37</sup> WHO, “Don’t pollute my future!”, p. 6.

<sup>38</sup> WHO, *Inheriting a sustainable world?*, pp. 81–82.

<sup>39</sup> Ibid., p. 88.

<sup>40</sup> Ibid., pp. 67 and 72.

## 5. The loss of biodiversity and access to nature

30. Biological diversity (biodiversity) is necessary for healthy ecosystems, which in turn are necessary for the full enjoyment of human rights (see A/HRC/34/49). Although everyone in the world depends on ecosystems, some depend more directly than others. Indigenous peoples and traditional communities that rely on forests, fisheries and other natural ecosystems for their material subsistence and cultural life suffer disproportionately when those ecosystems are destroyed or degraded. More generally, decreasing biodiversity and the loss of access to the natural environment affect many children around the world. Interaction with microbial diversity is critical to the development of healthy immune systems,<sup>41</sup> and the loss of such microbial diversity is apparently causing autoimmune diseases, allergic disorders and other non-communicable inflammatory diseases to become more prevalent in all parts of the world.<sup>42</sup> Exposure to nature also has beneficial effects on mental health,<sup>43</sup> but many children, especially in urban settings, have little or no contact with the natural environment.

## B. Environmental harm and the rights of children

31. Environmental harm interferes with the full enjoyment of a vast range of the rights of the child. This section focuses on the effects on children's rights to life, health, development, an adequate standard of living, play and recreation.<sup>44</sup>

### 1. Rights to life, health and development

32. The Human Rights Committee has stated that the right to life should not be interpreted narrowly, and that the protection of the right requires States to adopt positive measures, such as measures to reduce infant mortality and increase life expectancy.<sup>45</sup> The Convention on the Rights of the Child recognizes that every child has the inherent right to life and provides that States shall ensure to the maximum extent possible not only the survival, but also the development of the child (art. 6). The Convention also recognizes the right to the highest attainable standard of health (art. 24), as do the Constitution of WHO and the International Covenant on Economic, Social and Cultural Rights (art. 12).

33. A healthy environment is necessary for children's enjoyment of the rights to life, development and health.<sup>46</sup> The Convention on the Rights of the Child requires States parties to pursue full implementation of the right to health by appropriate measures that include the provision of nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution (art. 24 (2) (c)). As explained above, environmental harm causes the death of over 1 million children every year, most under the age of 5 years old. It also contributes to lifelong health problems, including asthma and other respiratory diseases, cardiovascular disease, cancer and neurological disorders. Climate change and the loss of biological diversity are long-term environmental crises that will affect children

<sup>41</sup> Paul Sandifer, Ariana Sutton-Grier and Bethney Ward, "Exploring connections among nature, biodiversity, ecosystem services, and human health and well-being: opportunities to enhance health and biodiversity conservation", *Ecosystem Services*, vol. 12 (April 2015), pp. 1 and 7.

<sup>42</sup> WHO and Secretariat of the Convention on Biological Diversity, *Connecting Global Priorities: Biodiversity and Human Health — A State of Knowledge Review* (2015), p. 150.

<sup>43</sup> Sandifer, Sutton-Grier and Ward "Exploring connections", p. 3; see also Committee on 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, para. 40.

<sup>44</sup> This is not an exhaustive list. The enjoyment of other rights, such as the rights to education and culture, are also implicated by climate change, natural disasters and other types of environmental harm. See, for example, A/HRC/35/13, para. 29. And the disproportionate effects on children already vulnerable for other reasons implicate obligations of non-discrimination, as explained below.

<sup>45</sup> See Human Rights Committee, general comment No. 6 (1982) on the right to life, para. 5.

<sup>46</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 4; Committee on the Rights of the Child, general comment No. 7 (2005) on implementing child rights in early childhood, para. 10; general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 2.

throughout their lives. There can be no doubt that environmental harm interferes with children's rights to life, health and development.

## 2. Right to an adequate standard of living

34. The Committee on Economic, Social and Cultural Rights has explained that the right to an adequate standard of living is intentionally expansive and that the Covenant includes a number of rights emanating from, and indispensable for, the realization of the right,<sup>47</sup> such as the rights to food, housing and safe and clean water and sanitation. The Convention on the Rights of the Child links the right to the development of children, recognizing the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (art. 27).

35. Environmental degradation obviously interferes with the enjoyment of the rights to food, housing, water and sanitation, and to an adequate standard of living generally. The lack of clean air and water, the exposure to hazardous chemicals and waste, the effects of climate change and the loss of biodiversity not only prevent children from enjoying their rights today; by interfering with their normal development, environmental harm prevents them from enjoying their rights in the future, and often throughout their lives.

## 3. Rights to play and recreation

36. The Convention on the Rights of the Child recognizes the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (art. 31). As the Committee on the Rights of the Child has explained, play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence and self-efficacy, as well as physical, social, cognitive and emotional strength and skills.<sup>48</sup> In addition to being of intrinsic value to children, play and recreation are critical to development, facilitating children's capacities to negotiate, regain emotional balance, resolve conflicts and make decisions. Through their involvement in play and recreation, children learn by doing; they explore and experience the world around them; experiment with new ideas, roles and experiences and in so doing, learn to understand and construct their social position within the world.<sup>49</sup>

37. Opportunities for play and recreation depend upon access to a healthy and safe environment.<sup>50</sup> Many children, and the vast majority of children living in poverty, face hazardous conditions when they leave their homes, including polluted water, open waste sites, toxic substances and the lack of safe green spaces.<sup>51</sup> While children will seek out opportunities for play and recreation even in dangerous environments, children who cannot play outside without exposing themselves to such environmental harms cannot fully enjoy their right to play and recreation. Even when their immediate surroundings are safe, the millions of children who live in urban settings often lack access to natural environments.

## IV. Human rights obligations relating to the protection of children from environmental harm

38. The human rights obligations of States in relation to the environment<sup>52</sup> apply with particular force to the rights of children, who are especially at risk from environmental harm and often unable to protect their own rights. Although these obligations arise from a wide variety of sources, the present report gives particular attention to the Convention on the Rights of the Child because of its focus on children and its near-universal acceptance by

<sup>47</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 3.

<sup>48</sup> See Committee on the Rights of the Child, general comment No. 17, para. 9.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*, para. 26.

<sup>51</sup> *Ibid.*, para. 35.

<sup>52</sup> For a summary of the obligations, see the framework principles on human rights and the environment presented to the thirty-seventh session of the Council (A/HRC/37/59, annex).

States. The present section focuses on key educational and procedural obligations, including with respect to information, participation and remedy; substantive obligations, including the obligation to ensure that the best interests of children are a primary consideration; and obligations of non-discrimination.

## A. Educational and procedural obligations

39. The obligations of States in relation to the environment include duties in relation to education and public awareness, to access to public information and assessment of proposed projects and policies, to expression, association and public participation in environmental decision-making and to remedies for harm (see A/HRC/37/59, annex, framework principles 5–10). These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights threatened by environmental harm. Fulfilling these rights helps to ensure that, when possible, children have agency to influence environmental policy and protect themselves from environmental harm.

### 1. Obligations of environmental education

40. In the Convention on the Rights of the Child, States parties agreed that the education of the child shall be directed to, among other things, the development of respect for the natural environment (art. 29).<sup>53</sup> Environmental education should begin early in the child's educational process, reflect the child's culture, language and environmental situation, and increase the child's understanding of the relationship between humans and the environment (see A/HRC/37/59, annex, framework principle 6). It should help children appreciate and enjoy the world and strengthen their capacity to respond to environmental challenges, including by encouraging and facilitating direct experience with the natural environment.<sup>54</sup>

41. The Committee on the Rights of the Child has stated that in order to develop respect for the natural environment, education must link issues of environment and sustainable development with socioeconomic, sociocultural and demographic issues, and that such respect should be learned by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.<sup>55</sup> The Committee has also stressed that for educational curricula to reflect this and the other principles reflected in article 29 of the Convention, it is essential to have pre-service and in-service training for teachers and others involved in children's education.

### 2. Obligations of information and assessment

42. The Convention on the Rights of the Child states that the child's right to freedom of expression "shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice" (art. 13). The right to information is particularly important in relation to environmental issues. Public access to environmental information enables individuals to understand the effect of environmental harm on their rights, including their rights to life and health, and supports the exercise of other rights, such as rights to expression, participation and remedy.<sup>56</sup>

43. Access to environmental information has two dimensions: States should regularly collect, update and disseminate environmental information, and they should provide affordable, effective and timely access to environmental information held by public authorities (see A/HRC/37/59, annex, framework principle 7). In situations involving

<sup>53</sup> In addition, target 4.7 of the Sustainable Development Goals calls on States to ensure, by 2030, that "all learners acquire the knowledge and skills needed to promote sustainable development".

<sup>54</sup> Committee on the Rights of the Child, "Report of the 2016 day of general discussion", pp. 18–19.

<sup>55</sup> See Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education, para. 13.

<sup>56</sup> See Committee on the Rights of the Child, general comment No. 12 (2009) on the right of the child to be heard, para. 82.

imminent threat of environmental harm, either from natural or human causes, States must ensure that all information that would enable the public to take protective measures is disseminated immediately.

44. The 2016 day of general discussion held by the Committee on the Rights of the Child identified many gaps in information on the effects of environmental harm on children, including: a lack of robust data on actual exposure of children to various types of environmental harm in light of their vulnerabilities and real-life conditions; a lack of longitudinal data on the effects of environmental harm on children's health and development at different ages; a lack of disaggregated data on children most at risk; and a lack of information about the adverse effects of the loss of biodiversity and degradation of ecosystems.<sup>57</sup> In addition to these general gaps, the Special Rapporteur on hazardous substances and wastes has pointed out that information about health risks and possible sources of exposure is neither available nor accessible to parents and guardians for tens of thousands of substances manufactured and used by industries in food and consumer products, which often end up contaminating air and water (see A/HRC/33/41, para. 59). When information about the effects of particular chemicals or other substances is held by corporations, they often argue that it cannot be made public for reasons of confidentiality. Finally, when information about environmental effects is public, it is often available only in technical terms that are difficult or impossible for non-experts to understand.

45. Much more must be done to collect information about sources of environmental harm to children and to make it publicly available and accessible. The Committee on the Rights of the Child has stressed that information relevant to children should be provided in a manner appropriate to their age and capacities.<sup>58</sup> Because children are exposed to many environmental harms at young ages, or even before birth, information must also be made available to parents or other caretakers in forms that are easily accessible, understandable and relevant. For example, information about chemicals and other hazardous substances should focus not just on those that are the most commonly produced, but also on those that are most likely to affect children, and should include clear descriptions not only of the possible effects, but also of how children may be exposed to them.

46. Obligations concerning environmental information are closely related to the need for assessment of environmental impacts. To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of the human rights of children (see A/HRC/37/59, annex, framework principle 8). While environmental impact assessment is now practised throughout the world, most assessment procedures do not address the rights of children, either by taking into account their greater vulnerability to harm or by providing for their participation. To ensure that the best interests of the child are a primary consideration in the development and implementation of policies and projects that may affect children, States should carry out "child-rights impact assessment", which examines the impacts on children of proposed measures and makes recommendations for alternatives and improvements. After implementation, authorities should evaluate the actual impact of the measure on children.<sup>59</sup>

### 3. Obligations to consider the views of children

47. The Convention on the Rights of the Child requires States parties to "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child" (art. 12). The Committee on the Rights of the Child has called the right of children to be heard and be taken seriously, one of the

<sup>57</sup> Committee on the Rights of the Child, "Report of the 2016 day of general discussion", p. 16.

<sup>58</sup> See Committee on the Rights of the Child, general comment No. 12, para. 82.

<sup>59</sup> See Committee on the Rights of the Child, general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 99; general comment No. 5 (2003) on general measures of implementation of the Convention, para. 45.

four general principles of the Convention, which should be considered in the interpretation and implementation of other rights.<sup>60</sup>

48. The Committee's point that the views of children may add relevant perspectives and experience is especially relevant with respect to environmental harm.<sup>61</sup> Children are not experts in air pollution, water management or toxicology, but neither are most adults. Once children have reached a certain level of maturity,<sup>62</sup> they are capable of forming opinions and expressing views on proposals for measures that may affect them. Moreover, like adults, they know better than anyone else the circumstances of their own lives. They can provide invaluable insights, for example, into their use of water sources outside the home; the effectiveness of warnings about environmental hazards; and their access to green spaces and natural ecosystems.<sup>63</sup> In particular, the views of children should be taken into account with respect to long-term environmental challenges, such as climate change and the loss of biodiversity, that will shape the world in which they will spend their lives.

49. The Committee has explained how to implement the participatory rights of children, including through children's hearings, children's parliaments, children-led organizations, children's unions or other representative bodies, discussions at school, social networking websites, and so forth.<sup>64</sup> It has made clear that all processes in which a child or children are heard and participate must be, among other things, voluntary, respectful and transparent, provide children with age-appropriate information, provide appropriate support to children according to their age and evolving capacities, and encourage the participation of marginalized children.<sup>65</sup>

50. States must protect children from risks of violence or other reprisals for participating in these processes or otherwise expressing their views on environmental matters. Adults who speak out on environmental issues are often at risk of harassment, violence and death.<sup>66</sup> Children are not exempt from such dangers. For example, the Special Rapporteur was concerned to learn that a 15-year-old girl was sued by a mining company for criminal defamation after she expressed her concerns that mining activities were causing water contamination that harmed her community.<sup>67</sup> Eventually, the charges against her were dismissed, but only after months of protests and litigation. The Committee on the Rights of the Child has urged States to ensure conditions for an active and vigilant civil society, refrain from interfering with independent organizations and facilitate their involvement.<sup>68</sup> With respect to child activists, in particular, States should make heightened efforts to ensure that they can express their views freely, without fear of retaliation.

#### 4. Obligation to provide for effective remedies

51. The Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2 (3)) and many other human rights instruments provide that States have obligations to provide for effective remedies for violations of human rights. Children are included in these protections. Although the Convention on the Rights of the

<sup>60</sup> See Committee on the Rights of the Child, general comment No. 12, para. 2. The other three are the right to non-discrimination, the right to life and development, and the primary consideration of the best interests of the child.

<sup>61</sup> *Ibid.*, para. 12.

<sup>62</sup> According to the Committee, maturity refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child. Maturity is difficult to define; in the context of article 12, it is the capacity of a child to express her or his views on issues in a reasonable and independent manner. *Ibid.*, para. 30.

<sup>63</sup> See, for example, Committee on the Rights of the Child, general comment No. 17, para. 19, which underlines the importance of involving children in the development of parks.

<sup>64</sup> See Committee on the Rights of the Child, general comment No. 14, para. 91.

<sup>65</sup> See Committee on the Rights of the Child, general comment No. 12, para. 134.

<sup>66</sup> See the report by the Special Rapporteur entitled "Environmental human rights defenders: a global crisis", at [www.universal-rights.org](http://www.universal-rights.org). See also the report of the Special Rapporteur on the situation of human rights defenders, which focuses on environmental defenders (A/71/281).

<sup>67</sup> Prachatai, "Mine operator sues high school student for criminal defamation", 14 December 2015. Available at <https://prachatai.com/english/node/5693>.

<sup>68</sup> See Committee on the Rights of the Child, general comment No. 16, para. 84.

Child does not have an explicit provision on remedies, the requirement of effective remedies to redress violations is implicit in the Convention. To provide for effective remedies, States should ensure that individuals have access to judicial and administrative procedures that meet basic requirements, including that the procedures are impartial, independent, affordable, transparent and fair (see A/HRC/37/59, annex, framework principle 10). Decisions should be made public and promptly and effectively enforced. States should provide guidance about how to seek access to justice, and should help to overcome obstacles to access such as language, illiteracy, expense and distance.

52. Because children's dependent status creates obstacles to their pursuit of remedies, the Committee on the Rights of the Child has made clear that States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39.<sup>69</sup>

53. In the context of environmental harm, children may face additional barriers to access to justice. For example, they and their representatives may lack information about the effects of particular harms or the harms may manifest only years after exposure, which may make it difficult or impossible for those affected to have standing to bring a case, meet applicable limitations periods or carry their burdens of proof and persuasion.<sup>70</sup> States should take steps to overcome these obstacles, including by allowing collective suits (or "class actions") on behalf of children. Moreover, when determining the level or form of reparation, mechanisms should take into account that children can be more vulnerable to the effects of abuse of their rights than adults and that the effects can be irreversible and result in lifelong damage. They should also take into account the evolving nature of children's development and capacities and reparation should be timely to limit ongoing and future damage to the child or children affected; for example, if children are identified as victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done.<sup>71</sup>

54. Because environmental harm can cause irreversible effects, such as early mortality or lifelong disability, for which no remedies are truly adequate, States must do what they can to prevent the harm from occurring in the first place. In some cases, that may be possible through injunctive relief ordered by judicial tribunals or administrative bodies. In addition, States must adopt and enforce effective regulatory measures, as described in the following section.

## **B. Substantive obligations to protect children from environmental harm**

55. Ideally, States would set substantive environmental standards at levels that would prevent all harmful environmental interference with the full enjoyment of human rights. While States have obligations to take deliberate, concrete and targeted measures towards that goal, they have some discretion in deciding which means are appropriate in light of available resources.<sup>72</sup> However, this discretion is not unlimited. For example, environmental standards must comply with obligations of non-discrimination, and they should take into account relevant international health and safety standards (see A/HRC/37/59, annex, framework principle 11). Once States have adopted substantive environmental standards, they should ensure their effective implementation by private as well as public actors (*ibid.*, framework principle 12).

<sup>69</sup> See Committee on the Rights of the Child, general comment No. 5, para. 24.

<sup>70</sup> Committee on the Rights of the Child, "Report of the 2016 day of general discussion", pp. 21-22.

<sup>71</sup> See Committee on the Rights of the Child, general comment No. 16, para. 31.

<sup>72</sup> See, for example, Committee on the Rights of the Child, general comment No. 15, para. 72.

56. The discretion of States with respect to the protection of children's rights is further restricted by their obligations under the Convention on the Rights of the Child and other agreements to adopt and implement special measures of protection, assistance and care for children, and to ensure that the best interests of children are a primary consideration in all actions concerning children.<sup>73</sup> These obligations require States not just to protect children from harm, but also to ensure their well-being and development, including by taking into account the possibility of future risk and harm.<sup>74</sup>

57. The discretion accorded States in deciding appropriate levels of environmental protection rests on the assumption that societies will make informed decisions as to how to balance the costs of environmental harm against the benefits of spending resources for other goals, such as faster short-term economic growth. But the cost-benefit calculus is very different for children, especially younger children. The consequences of environmental harm are usually far more severe, and may include death or irreversible, lifelong effects. The cumulative effects of long-term environmental harm, such as climate change and the loss of biodiversity, increase over time, so that decisions taken today will affect children much more than adults. The lack of full information about many types of environmental harm means that their long-term effects are often poorly understood and underestimated. And, finally, the voices of children are only rarely heard in environmental decision-making.

58. Therefore, to satisfy their obligations of special protection and care, and to ensure that the best interests of the child are taken into account, States have heightened obligations to take effective measures to protect children from environmental harm. They should make certain that they are protecting children's rights before they make decisions that may cause environmental harm, including by: collecting and disseminating disaggregated information on the effects of pollution, chemicals and other potentially toxic substances on the health and well-being of children; ensuring that the views of children are taken into account in environmental decision-making; and carrying out children's rights impact assessments. States should adopt and implement environmental standards that are consistent with the best available science and relevant international health and safety standards, and they should never take retrogressive measures.<sup>75</sup> The lack of full scientific certainty should never be used to justify postponing effective and proportionate measures to prevent environmental harm to children, especially when there are threats of serious or irreversible damage. On the contrary, States should take precautionary measures to protect against such harm.<sup>76</sup> Once standards protective of children's rights are adopted, States must ensure that they are effectively implemented and enforced. To that end, they must provide regulatory agencies with sufficient resources to monitor and enforce compliance with domestic laws, including by investigating complaints and bringing appropriate remedial actions.<sup>77</sup>

59. As part of their obligations to protect children from environmental harm, States must adequately regulate private actors, including business enterprises. Businesses can cause environmental harm to children's rights in many ways, including by producing hazardous products, polluting the air and water, creating hazardous waste, contributing to climate change and destroying forests and other natural ecosystems.<sup>78</sup> They can also commit human rights abuses such as violating child labour protections or colluding with governmental or private security forces to use violence against peaceful protestors.

60. As the Committee on the Rights of the Child has stated, States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights.<sup>79</sup> This includes ensuring that businesses comply with all applicable environmental standards. States should require businesses, including State-owned businesses, to carry out "child-rights due diligence" to

<sup>73</sup> See Convention on the Rights of the Child, art. 3; International Covenant on Economic, Social and Cultural Rights, art. 10 (3).

<sup>74</sup> See Committee on the Rights of the Child, general comment No. 14, paras. 24 and 71.

<sup>75</sup> See Committee on the Rights of the Child, general comment No. 15, para. 72.

<sup>76</sup> See Rio Declaration on Environment and Development, principle 15.

<sup>77</sup> See Committee on the Rights of the Child, general comment No. 16, para. 61.

<sup>78</sup> *Ibid.*, para. 19.

<sup>79</sup> *Ibid.*, para. 28.

ensure that they identify, prevent and mitigate their impact on children's rights.<sup>80</sup> This due diligence should include careful consideration of the effects of their actual and proposed actions on the rights of children through environmental harm. States must also ensure that information held by businesses relevant to the health and well-being of children is made publicly available.

61. States should cooperate with one another to address the effects of global and transboundary harm on the rights of children.<sup>81</sup> For example, in the negotiation and implementation of multilateral environmental agreements, they should address children's rights, for example by providing that national action plans should include strategies to protect children as well as other vulnerable segments of the population.<sup>82</sup> States should work together to ensure that businesses operating in more than one country comply with their obligations under all applicable domestic laws. The Committee on the Rights of the Child has set out a framework for such cooperation: host States have the primary responsibility to regulate business enterprises operating within their territory, but home States can also have regulatory obligations when there is a reasonable link between the State and the conduct in question. For example, home States in such situations should assist host States with investigation and enforcement; enable access to effective remedies for children and their families who have suffered human rights abuses; and provide that their international assistance agencies identify and protect against harmful effects of any projects that they support.<sup>83</sup>

62. Businesses have direct responsibilities to respect children's rights. To meet these responsibilities, it is necessary, but not sufficient, that businesses comply with domestic laws. Certainly businesses should never seek to evade applicable laws through corruption or other practices, or abuse those laws by, for example, bringing criminal defamation suits against those who oppose their activities. But that is a low bar. To respect the rights of children to be free from environmental harm, businesses should comply with the Guiding Principles on Business and Human Rights; the Children's Rights and Business Principles;<sup>84</sup> and the recommendations of the Committee on the Rights of the Child in its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights. Among other things, they should undertake environmental and human rights impact assessments that examine the effects of proposed actions on children; develop and make public information about the effects of their actions and products on the health and well-being of children; facilitate children's participation, as appropriate, in consultations; seek to strengthen environmental, health and safety standards, rather than lobby against them; and, in general, avoid causing or contributing to environmental harm to children and remediate any such harm when it does occur.

### C. Obligations of non-discrimination

63. The Convention on the Rights of the Child requires its States parties to respect and ensure the rights in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (art. 2). Children are also encompassed by the non-discrimination obligations of States under many other human rights agreements, including the International Covenant on Civil and Political Rights (arts. 2 (1) and 26)) and the International Covenant on Economic, Social and Cultural Rights (art. 2 (2)).

64. The obligations of States to prohibit discrimination and to ensure equal and effective protection against discrimination undoubtedly apply to the equal enjoyment of human rights relating to a safe, clean, healthy and sustainable environment (see A/HRC/37/59, annex, framework principle 3). These obligations apply not only to direct discrimination, but also

<sup>80</sup> Ibid., para. 62.

<sup>81</sup> Ibid., para. 41.

<sup>82</sup> See, for example, Minamata Convention on Mercury, annex C, art. 1 (i).

<sup>83</sup> See Committee on the Rights of the Child, general comment No. 16, paras. 42-45.

<sup>84</sup> The Children's Rights and Business Principles were developed by UNICEF, the United Nations Global Compact and Save the Children, and released in 2012.

to indirect discrimination, when facially neutral laws, policies or practices have a disproportionate impact on the exercise of human rights as distinguished by prohibited grounds of discrimination.<sup>85</sup> The Committee on the Rights of the Child has emphasized that the right to non-discrimination does not just prohibit all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality.<sup>86</sup>

65. While all children are vulnerable to environmental harm, some are particularly at risk. To highlight just a few examples: girl children are more likely to suffer from the lack of clean and safe sources of water; indigenous children from the destruction of natural ecosystems on which they rely for food, water, housing and culture; children with disabilities from the failure to anticipate and respond safely and effectively to natural disasters; and children from low-income families from a vast range of environmental problems, including household air pollution, lack of clean water, exposure to toxic substances and a lack of access to safe and clean opportunities for play and recreation.

66. States should take effective measures to ensure that children in these and other particularly vulnerable situations are able to exercise their human rights on an equal basis, and that environmental harm does not affect them disproportionately. For example, States and business enterprises should require that their children's rights impact assessment procedures take fully into account the impacts of proposed policies, programmes and projects on the most vulnerable. Environmental educational programmes should reflect the cultural and environmental situation of the children involved. States should collect disaggregated data to identify disparate impacts of environmental harm on different groups of children.<sup>87</sup> Environmental information should be made available to children and their parents or other caretakers in their own language. States should ensure that girls, children with disabilities and children from marginalized communities are able to voice their views and that their views are given due weight.<sup>88</sup> States should take steps to enable children with disabilities, as well as others, to play and engage in recreational activities in safe and healthy environments.<sup>89</sup> Children at particular risk and their caretakers should be provided with assistance in accessing effective remedies.

## V. Future generations

67. International environmental agreements and declarations on sustainable development often express concerns about the effects of environmental harm on future generations.<sup>90</sup> Indeed, the definition of sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".<sup>91</sup> However, human rights law does not attempt to define the rights of future generations or of obligations of States to them. It is understandable that international environmental and development policy and human rights law take different approaches to

<sup>85</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 7.

<sup>86</sup> See Committee on the Rights of the Child, general comment No. 14, para. 41.

<sup>87</sup> See, for example, Committee on the Rights of the Child, general comment No. 5, para. 12; general comment No. 9 (2006) on the rights of children with disabilities, para. 19; general comment No. 11 (2009) on indigenous children and their rights under the Convention, para. 26.

<sup>88</sup> See, for example, Committee on the Rights of the Child, general comment No. 12, paras. 77–78; general comment No. 9, para. 32; general comment No. 11, para. 39.

<sup>89</sup> See Convention on the Rights of Persons with Disabilities, art. 30; Committee on the Rights of the Child, general comment No. 17, para. 50.

<sup>90</sup> The many examples include the Rio Declaration on Environment and Development, principle 3; the United Nations Framework Convention on Climate Change, art. 3 (1); the Convention on Biological Diversity, preamble; Transforming our world: the 2030 Agenda for Sustainable Development.

<sup>91</sup> See the report of the World Commission on Environment and Development entitled "Our Common Future" (A/42/427, annex), ch. 2, para. 1 (p. 54). See also the report of the Secretary-General on intergenerational solidarity and the needs of future generations (A/68/322).

issues concerning future generations. While the former is concerned with the long-term as well as short-term consequences of present decisions, the latter is based primarily on the rights of individual human beings. It is difficult, if not impossible, to define the rights of individuals who are not yet alive.

68. Nevertheless, the division between present and future generations is less sharp than it sometimes appears to be. Concerns about future generations and sustainable development often focus on the state of the environment in particular years in the future, such as the year 2030 or 2100. Many people that will be living in 2100 are not yet born, and in that sense truly belong to future generations. But many people who will be living then are already alive today. To take a personal example, the Special Rapporteur has twin nieces who were born in 2016. The next century will begin before they celebrate their eighty-fourth birthday. Moreover, the line between future generations and today's children shifts every time another baby arrives and inherits their full entitlement of human rights. It is critical, therefore, that discussions of future generations take into account the rights of the children who are constantly arriving, or have already arrived, on this planet. We do not need to look far to see the people whose future lives will be affected by our actions today. They are already here.

## VI. Conclusions and recommendations

69. **No group is more vulnerable to environmental harm than children. Air pollution, water pollution and exposure to toxic substances, together with other types of environmental harm, cause 1.5 million deaths of children under the age of 5 every year, and contribute to disease, disability and early mortality throughout their life. In addition, climate change and the loss of biodiversity threaten to cause long-term effects that will blight children's lives for years to come. Making matters worse, children are often not able to exercise their rights, including their rights to information, participation and access to effective remedies.**

70. **States must do more to respect, protect and fulfil the rights of children in relation to environmental harm. To that end, the present report includes a number of specific recommendations, which build on the work of other special rapporteurs, the Committee on the Rights of the Child, OHCHR, UNICEF, WHO and the many others who submitted oral and written communications during the preparation of the report.**

71. **With respect to children's educational and procedural rights, States should, among other things:**

(a) **Ensure that educational programmes increase children's understanding of environmental issues and strengthen their capacity to respond to environmental challenges;**

(b) **Ensure that the effects of proposed measures on children's rights are assessed before the measures are taken or approved;**

(c) **Collect information about sources of environmental harm to children and make the information publicly available and accessible;**

(d) **Facilitate the participation of children in environmental decision-making processes, and protect them from reprisals for their participation or otherwise expressing their views on environmental matters;**

(e) **Remove barriers that children face to access to justice for environmental harm to the full enjoyment of their human rights.**

72. **States also have heightened obligations to take effective substantive measures to protect children from environmental harm, including by ensuring that their best interests are a primary consideration with respect to all decision-making that may cause them environmental harm. In particular, States should adopt and implement environmental standards that are consistent with the best available science and relevant international health and safety standards, never take retrogressive measures,**

and pursue precautionary measures to protect against environmental harm, especially when there are threats of serious or irreversible damage.

73. In this light, States should consider and, wherever possible, implement recommendations from expert agencies on specific measures to protect children's health and well-being from environmental harm.<sup>92</sup> WHO and UNICEF, in particular, have published detailed recommendations, including many examples of good practices.<sup>93</sup> Some simple changes could have enormous effects. For example, WHO states that widespread handwashing with soap after defecation and before preparing food would greatly reduce the incidence of diarrhoea, trachoma and respiratory infections that kill or harm so many children under the age of 5.<sup>94</sup>

74. States should cooperate to address the effects of environmental harm on the rights of children, including by sharing information on the toxicity and other characteristics of chemicals and other products and ensuring that international trade in chemicals and waste is in full compliance with the relevant environmental treaties.

75. With respect to the activities of business enterprises operating in more than one State, the States concerned should cooperate to ensure that the businesses comply with all applicable environmental laws, including by providing that victims of environmental harm allegedly caused by businesses have access to effective remedies in the courts of the States where the businesses are based as well as the States where the victims experienced the harm.

76. States should ensure that children in particularly vulnerable situations are able to exercise their human rights on an equal basis and that environmental harm does not affect them disproportionately, including by ensuring that impact assessment procedures take fully into account the effects of proposed policies, programmes and projects on the children most at risk.

77. States that have not yet done so should become parties to the Optional Protocol to the Convention on the Rights of the Child, and the State that has not yet ratified the Convention on the Rights of the Child should do so without further delay.

78. International financial mechanisms should ensure that the projects that they support do not cause environmental harm that adversely affects the rights of children, by including appropriate protections in their social and environmental safeguards.

79. Business enterprises should protect children's rights from environmental harm from their activities, including by carrying out environmental and human rights impact assessments that examine the effects of proposed actions on children, and by fully complying with the Guiding Principles on Business and Human Rights, the Children's Rights and Business Principles, and the recommendations of the Committee on the Rights of the Child in its general comment No. 16.

80. The Committee on the Rights of the Child should consider adopting a new general comment on children's rights and the environment.

<sup>92</sup> States should also implement the recommendations of the Special Rapporteur on hazardous substances and wastes with respect to the threats to children from toxic chemicals (see A/HRC/33/41, paras. 110-114), and those of OHCHR contained in its report on climate change and human rights (see A/HRC/35/13, paras. 57-66).

<sup>93</sup> See, for example, WHO, *Inheriting a sustainable world?*; WHO, "Don't pollute my future!"; UNICEF, *Clear the air for children*; UNICEF, *Unless we act now*.

<sup>94</sup> WHO, *Inheriting a sustainable world?*, p. 32, indicates that it is estimated that handwashing with soap could reduce diarrhoeal disease by 23 per cent and prevent 297,000 deaths per year from diarrhoea alone.

# COMMITTEE ON THE RIGHTS OF THE CHILD

## REPORT OF THE 2016 DAY OF GENERAL DISCUSSION

### Children's Rights and the Environment



This is Exhibit "C" referred to in the Affidavit of  
Katherine Vandergrift, sworn before me at  
Ottawa this  
29<sup>th</sup> day of November, 2018.

A Commissioner for taking Affidavits within  
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## 1. Introduction

The impact of environmental damage on children's rights is not a new issue. Yet, despite data explicitly linking environmental harm to child rights violations, increased awareness of environmental crises and numerous international agreements, the understanding of the relationship between children's rights and the environment is still in its infancy.

To foster a deeper understanding of the contents and implications of the CRC with regard to environmental issues, the Committee on the Rights of the Child (the Committee) dedicated its 2016 Day of General Discussion (DGD) to the topic of children's rights and the environment. On 23 September 2016, over 250 experts, NGO and UN agency representatives, academics and child activists met in Geneva for the DGD. The Committee also received 49 written submissions and the event drew significant social media attention.<sup>1</sup> The day was a milestone in bringing together knowledge on the environment and children's rights across different areas of expertise.

The day began in full plenary, followed by discussions in working groups<sup>2</sup>. The first working group focused on exposure to environmental toxicants, while the second one looked at the child rights impacts of climate change (morning) and the depletion of natural resources, degraded ecosystems, and loss of biodiversity (afternoon). In the closing session, the two Working Groups' conclusions were presented to the plenary. This report highlights the main issues discussed during the day and in the written submissions. It also provides the

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<sup>1</sup> Using a free tracking tool 336 DGD-related tweets from 187 sources were counted. It was estimated that these tweets reached 1,802,018 people and were viewed 4,046,560 times in total.

<sup>2</sup> The list of speakers is attached as an Annex.

recommendations which came out of the day and which form the basis for taking the environmental rights of children forward.<sup>3</sup>

The Committee would like to extend its gratitude to Terre des Hommes and the Office of the United Nations High Commissioner for Human Rights (OHCHR), as well as UNICEF, Child Rights Connect and Child Rights International Network for their financial and organizational support to the 2016 Day of General Discussion. The Committee thanks the Permanent Missions to the UN in Geneva of Germany, Uruguay and the Philippines for their valuable contributions to the day.

## 2. Contextualizing Children's Rights and the Environment

During his opening remarks the Chair of the Committee, Mr. Benyam Dawit Mezmur noted that a discussion on the topic was extremely relevant and timely. This need for comprehensive debate, analysis and urgent action in relation to the impacts of environmental harm on children was emphasised by the panellists and participants throughout the day.

### Relevance

Environmental damage is a pressing human rights challenge, which has an impact on children's lives today and in the future. Violations of their rights resulting from environmental harm can have irreversible, lifelong and even transgenerational consequences. Children everywhere suffer violations of their rights to life, development, health, food, water, education, culture, play and other rights because governments fail to protect the natural environment. The impact of pollution in one place can be felt by children living far away and climate change is unquestionably a global problem. While environmental harm affects people at any age, children are particularly vulnerable, due to their evolving physical and mental development and status within society. Certain groups of children, including children from indigenous, low-income or other marginalized communities are often at a higher risk, which raises the question of environmental injustice.

The scientific data reflecting the global state of children's environmental health is unequivocal. In her statement, Dr. Maria Neira<sup>4</sup> cited recent WHO estimates that emphasise the urgency of the matter: 'Of the 5.9 million deaths of children under five each year, 26% are attributable to the environment'. Air pollution alone kills 570,000 children under five every year. But these numbers are only the 'tip of the iceberg' as UN Special Rapporteur Baskut Tuncak<sup>5</sup> pointed out later in the debate. 'There is a 'silent pandemic' of disabilities associated with exposure to toxics and pollution during childhood, many of which will not manifest themselves for years or decades'. This assault on children's rights remains largely invisible while decision-makers are not held to account.

Climate change poses an immediate and far-reaching threat to the enjoyment of many of the

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<sup>3</sup> All relevant conference documents may be found on the [Committee's website](#). For a detailed account of the day, please refer to the webcast, presentations and written submissions. The DGD was also complemented by side events on the 'The Unsound Management of Chemicals and the Rights of the Child' and on 'Children's views, Play, and Urban Environments'. An exhibition of children's paintings organized by Terre des Hommes accompanied the DGD.

<sup>4</sup> WHO Director, Department of Public Health, Environmental and Social Determinants of Health

<sup>5</sup> UN Special Rapporteur on the implications for human rights of the environmental sound management and disposal of hazardous substances and toxic wastes

rights enshrined in the CRC. Brianna Fruean<sup>6</sup> noted that ‘there is a common misconception that children will live with the consequences of climate change in the future, when the reality is that children are dealing with consequences of climate change as we speak.’ Joni Pegram<sup>7</sup> emphasised that ‘climate change threatens to roll back decades of hard-earned progress. From malnutrition and the spread of vector- and water-borne diseases, to physical and psychological trauma, children are affected in different ways, and more profoundly, than adults. They are also one of the largest groups to be affected, as many of the most vulnerable countries have a high proportion of children. Recent data suggests that over half a billion children live in areas with extremely high risk of flooding, 115 million are at high or extremely high risk from tropical cyclones, and almost 160 million are exposed to high or extremely high drought severity.’

DGD discussions further highlighted the child rights impacts related to the loss of biodiversity, ecosystem degradation and resource depletion. Losing the benefits of a healthy ecosystem such as the supply of nutrition, clean drinking water or herbal medicines, puts children’s rights to development, health, housing, water and food at risk. However, the effects of environmental degradation can go far beyond the direct impact on a child’s health and standard of living. The loss of areas for subsistence farming or access to fishery resources has implications for children’s right to education and cultural rights, when traditional ways of life closely linked to the environment are eliminated. Yet some of these issues receive limited attention because the relationship between children’s rights and the environment is insufficiently understood.

Damage to ecosystems and biodiversity and climate change can act as threat multipliers, by aggravating underlying causes of serious violations through conflict over limited resources, increasing inequalities, forced migration and even early marriage.

The threat of environmental harm affects children today and future generations, through the ‘toxic’ legacy of the past and present. Environmental challenges are likely to increase over the next decades and could even threaten children’s very future on the planet. Urbanization, a huge transformative trend, is having a major impact on children’s access to healthy environments and nature. By 2050, the world’s urban population is expected to nearly double.

Despite the gravity of all these challenges, the discussions left little doubt that harm to children is preventable if environmental risk factors are adequately addressed. As Rheka Dhillon-Richardson, a youth activist, noted solutions are available, if we are willing “to change our behaviours, our laws and our relationship to nature.” She represented the growing movement of child activists from around the world who have started providing their own responses by getting involved in nature conservation, developing ideas for sustainable lifestyles and raising their voice. Yet their concerns are not sufficiently listened to or taken into account. The DGD was also relevant in this respect as it created space for them to have their views heard.

A timely discussion

This discussion was timely given the recent adoption of major international policy frameworks. The Sustainable Development Goals (SDGs), the Paris Agreement on climate change, the Sendai Framework for Disaster Risk Reduction and the New Urban Agenda all

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<sup>6</sup> Youth activist

<sup>7</sup> Senior Policy & Advocacy Adviser, UNICEF UK

make the link between protecting the environment and realizing human rights. As States begin implementing these frameworks, it is essential that child rights obligations guide their actions.

The relationship between children's rights and the environment is increasingly being considered in other parts of the UN human rights system. These include the report of the Special Rapporteur on Human Rights and Hazardous Substances and Wastes on the child rights implications of toxics and pollution<sup>8</sup> (September 2016); the Human Rights Council's resolution welcoming the adoption of the Paris Agreement and mandating a panel discussion and analytical study on climate change and children's rights<sup>9</sup> (2017); CEDAW's drafting of a General Comment on Gender and Climate Change; and the decision of the Special Rapporteur on Human Rights and the Environment to write a report on children's environmental rights (due in March 2018). These initiatives offer great opportunities to develop the understanding of this relationship and create momentum across the UN human rights system.

### 3. An overview of the legal framework

Human rights and the environment: an evolving landscape

During his presentation, UN Special Rapporteur on human rights and the environment John Knox stressed that environmental harm can and does interfere with the full enjoyment of a vast range of human rights, and human rights law requires States to take steps to protect people from such harm. He noted that human rights institutions have identified three categories of obligations in the context of environmental protection:

1. Procedural obligations (a) to assess environmental impacts and make environmental information public; (b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and (c) to provide access to effective remedies for environmental harm.
2. Substantive obligations to protect against environmental harm that interferes with the enjoyment of human rights. Specifically, States have an obligation to adopt a legal framework that protects against environmental harm. This obligation includes a duty to protect against such harm when it is caused by corporations and other non-State actors, as well as by State agencies.
3. Heightened obligations owed to those who are especially vulnerable to environmental harm. States must not discriminate against groups on prohibited grounds in the application of their environmental laws and policies. And they must take additional steps to protect certain groups.

John Knox emphasized that 'in sheer numbers, no group is more vulnerable to environmental harm, as a whole, than children.' Considering the limited attention to the issue, it would be highly useful to undertake a detailed analysis of how environmental harm affects the enjoyment of children's rights and clarify the heightened obligations pertaining to children's environmental rights.

The CRC and the environment

The CRC is one of the few human rights instruments that explicitly require States to take steps to protect the environment. There are two articles which specifically mention the

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<sup>8</sup> A/HRC/33/41

<sup>9</sup> Human Rights Council [resolution 32/33](#)

environment, namely:

**Article 24 (2)** on the right of the child to the enjoyment of the highest attainable standard of health provides that:

“States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: [...] to combat disease and malnutrition [...] taking into consideration the dangers and risks of environmental pollution”

**Article 29 (1)** on the aims of education provides that:

“States Parties agree that the education of the child shall be directed to: [...] the development of respect for the natural environment.”

These articles provide an important leverage to clarify States’ obligations and place the Committee in a strategic position to hold States to account<sup>10</sup>. Other provisions of the CRC that implicitly relate to environmental protection include the general principles of the rights to life, survival and development (Art.6), non-discrimination (Art.2), the right to be heard (Art.12), and the best interests of the child (Art.2) as well as the rights to rest, leisure, play, recreational activities, cultural life and the arts (Art.31), freedom from exploitation (Art.32), protection from all forms of violence and physical and mental integrity (Art. 19), an adequate standard of living (Art. 37), food, water and sanitation, housing (Art. 24 and 27), education (Art. 28) an identity (Art.8), freedom of expression and information (Arts. 13 and 17), and effective remedies and reparation. A healthy environment could even be considered a sine qua non precondition for the effective implementation of the Convention as a whole, as participants pointed out<sup>11</sup>. Environmental concerns were further raised in relation to the rights of specific groups of children, including children with disabilities (Art. 23) and indigenous children (Art.30).

States have a duty to apply these environmental rights to children in their country, but the Convention also places obligations on countries to take action on upholding children’s rights internationally, with clear implications for transboundary environmental harm (Arts. 4 and 24 (4)).

Defining children’s environmental rights

The environmental context raises a number of questions regarding the scope of protection provided by the Convention, namely:

- (1) Certain environmental factors impact the child prior to conception, and these impacts can continue into adulthood and inter-generationally. Disability and disease associated with exposure to toxics and pollution of parents prior to having children, or of the children themselves, may not manifest themselves for years or even decades. Moreover, in many cases scientific understanding is yet to permit a full evaluation of the risks resulting from environmental harm.
- (2) Certain hazardous substances from human activity persist in water, food, air and soil for a long time and thereby expose generations of children to environmental risk factors. With the environment increasingly under pressure, there is a risk of rising

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<sup>10</sup> Baskut Tuncak and John Knox

<sup>11</sup> Center for International Environmental Law.

impacts and abrupt change and irreparable damage impacting the quality of life of all future generations.

Taking account of the nature of threats arising from environmental harm, participants emphasized the link between children's rights and the relevant principles of environmental law and policy such as prevention, precaution and sustainability.

The meaning of the 'environment' in a children's rights context

The meaning of the term 'environment' was discussed in depth, as both the natural and man-made environment is a precondition of life that shapes human activities. It can have positive and negative, direct or indirect influence on children's rights. One contribution outlined three ways in which the term environment can be applied in relation to children's rights:

1. Where a child lives, including: living conditions, housing, and community spaces. This environment should ensure a decent standard of living, related to shelter, play, health, etc.
2. The natural world, which includes plants, animals and people. Many indigenous religions consider their deities to be part of nature, and do not consider people as separate from the natural environment. There is ample evidence that children need to have access to the natural world as they develop, and depriving them of this can have a negative impact.
3. The duty of current populations to consider the rights of 'future generations' when exploiting natural resources, and causing environmental damage.<sup>12</sup>

A number of participants warned against the use of preconceived and homogenous notions of the environment, as the meaning differs depending on the contexts in which children grow up. Some cultural traditions do not know the word environment. Moreover, children should be asked about their own conceptions of the environment. Terms like ecosystem services or natural resources were also viewed critically as they might be understood to imply the idea that nature is a good to be consumed for the benefit of humankind rather than a global common to be cared for. Education should allow for a critical reflection of the diverse meanings of the environment.

#### 4. Key elements of the relationship between children's rights and the environment

The following section addresses key elements of the relationship between children's rights and the environment which emerged from the DGD. The section examines (1) how damage to the environment negatively affects children's rights and (2) how children can participate in environmental matters, and (3) it reflects on the responsibilities of States and other actors, particularly the business sector, regarding the rights of the child in relation to a healthy and sustainable environment. If rights considerations overlap, it could be for the following reason: As regards the environment, children's rights are indeed indivisible, interlinked and interdependent.

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<sup>12</sup> Alex Tennant

#### 4.1. Protecting children's rights against environmental harm

##### Ensuring a *healthy* environment

Without a healthy environment a child cannot live or develop. All actions should recognize this inextricable linkage between health and the environment, as well as social and cultural well-being. As Dr Maria Neira emphasized, '(h)health is more than absence of illness'. Children should be able develop 'their full capacity, enjoy quality of life and clean environments'.

Article 24 of the Convention explicitly requires States to take into account the risk of contaminated food and water as well as pollution in the realization of the right to health. The status of children's environmental health is also closely linked to other rights. These include the rights to life, survival and development, food, water and sanitation, adequate housing, education, freedom from economic exploitation, information, and an adequate standard of living. The right to equality and non-discrimination implies that all children should have access to a healthy and safe environment.

##### Obligations

Baskut Tuncak noted that State duties to protect and realize the right of the child to the highest attainable standard of health and related rights include measures to prevent disease and other health impacts resulting from environmental harm, especially in early childhood, as well as access to health care for treatment. Furthermore, States have a duty to ensure the social determinants of health that are closely linked to and mediate exposure to environmental risk factors, including the conditions in which children are born, grow up, play, eat and drink as well as work.

Preventive action, including adequately enforced laws and monitoring, should lie at the heart of governments' protection efforts, as many contributions emphasized, because environmental factors can significantly reduce the likelihood that a child will attain the highest attainable standard of health. By virtue of their evolving physical and mental development children are particularly vulnerable to risks in the environment. Health effects are often irreversible and may not manifest themselves for years. Even low levels of environmental exposure can bring considerable harm and often cumulate over time. Children are also affected differently according to age. Dr Lilian Corra<sup>13</sup> noted that adolescents may be less susceptible to exposure but they are more likely to have contact with unhealthy environments due to occupational conditions.

Children should also receive an appropriate diagnosis and treatment. According to Baskut Tuncak, for certain environmental factors, the risk of death, injury or illness can be reduced or avoided with timely medical intervention, in parallel with interventions by communities, health-care workers, government officials and other actors. Health sector professionals should be trained 'to understand the environment' and build capacity to monitor childhood exposure to environmental health risks, as Dr. Corra emphasized.

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<sup>13</sup> International Society of Doctors for the Environment

### Environmental health challenges

The multitude of impacts on health due to environmental harm was discussed at length during the day<sup>14</sup>. The latest WHO figures estimate that over 1.7 million children under the age of five die prematurely from modifiable environmental conditions each year<sup>15</sup>. This does not account for children who die after the age of five, or those who suffer from non-fatal diseases or disabilities.

The discussion examined a wide range of environmental factors that pose a threat to children's health<sup>16</sup>, including a number of emerging issues such as the rising impact of global climate and ecosystem change and certain environmental chemicals (e.g. endocrine disruptors). Mr. Nicholas Rees of UNICEF noted that many types of air pollution are projected to increase over the next 50 years and could have a profound effect on global premature deaths. Dr Neira added that while poor water, sanitation and hygiene are established risk factors, they continue to harm children. For example, an estimated 360 000 child deaths from diarrhoea could be prevented each year.

Exposure to environmental health risks is unequally distributed between countries, with a higher burden in low- and medium-income countries, as well as within the society, often related to social or economic characteristics such as income, social status, employment and education, gender, age and ethnicity.<sup>17</sup> The WHO estimates that 12 million children in developing countries suffer permanent brain damage due to lead poisoning. 85 million children are forced to work in hazardous conditions, which includes unhealthy environments. Participants considered safe working environments, including for women in child-bearing age or pregnant women, to be crucial to child health. Inequality not only creates disparate impact, but also determines the availability of resources to mitigate some of the most negative effects, particularly among children<sup>18</sup>.

### Gaps

Legislative, enforcement and other measures to prevent children from being exposed to environmental health risks are often inadequate or missing, as also the data suggests. Baskut Tuncak noted, for example, that while the child's best interests should be at the heart of all decisions affecting the child, today 'laws and policies around the world essentially permit children to be exposed to hazardous substances'. Thousands of environmental chemicals have been presumed safe and do not require evaluation and assessment for their impacts on children's health, with little to no evidence<sup>19</sup>. Moreover, according to Kinderrechtskoalitie, environmental standards often fail to consider the specific health needs of children because they are based on average adults and do not reflect real-life conditions. Participants shared

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<sup>14</sup> Environment-related health conditions include, for example, infections and parasitic diseases (e.g. respiratory infections), non-communicable diseases (e.g. cancer, mental, behavioural and neurological disorders); physical inactivity; neonatal and nutritional conditions; and acute poisoning and injuries. See also WHO report on *Preventing disease through healthy environments: a global assessment of the burden of disease from environmental risks* (2016).

<sup>15</sup> <http://www.who.int/mediacentre/news/releases/2017/pollution-child-death/en/>.

<sup>16</sup> Attention is drawn to the written submissions for the 2016 DGD that deal with many of these environmental risks in greater detail.

<sup>17</sup> The WHO European Centre for Environment and Health

<sup>18</sup> Recovery of lead from old car batteries or waste recycling, for example, often occur in the open air, in impoverished and densely populated residential areas with little pollution control. Children who live in these areas can be exposed to toxics all day long and have little to no access to adequate health care. Pure Earth/Yuyun Ismawati

<sup>19</sup> Center for the Human Rights of Children

many cases in which business activities pollute the environment because governments lack the political will to regulate and control them, with severe consequences for children's health<sup>20</sup>.

Legislation and policy must be effectively enforced to protect children from environmental health risks, including through monitoring and research, outreach and education, planning and financial support. Yet, according to the organisation Opcion, many countries lack basic institutional capacities such as environmental assessment and certification agencies, poison centres and supervisory bodies to enforce compliance with laws. Even where institutions exist, limited resources impede regular inspections of degraded sites, which can be remote. In addition, agencies dealing with child health and environmental issues do not always coordinate with each other, resulting in the absence of child-specific action.<sup>21</sup>

Several participants emphasized the lack of adequate monitoring mechanisms for exposures to environmental risk factors, even in areas with existing regulation. Nicholas Rees pointed out that air pollution remains an invisible threat in large parts of Africa, where it is a growing problem, because ground-level monitoring stations are missing. Lead presents an example where even small lapses in oversight can result in acute health issues. Dr Lilian Corra noted that deficits in surveillance are further exacerbated by the lack of common standards and indicators, definitions and age categories applied by agencies that collect data and report on childhood health and the environment.

Another problem that exists everywhere is the ability of medical practitioners within affected communities to be able to diagnose environment-related diseases and intervene early, including through testing and treatment for the ill-health caused. For example, Yuyun Ismawati of Human Rights Watch informed that health clinics in gold-mining areas often do not inform people about the risks connected with mercury use, let alone test or treat children for mercury poisoning.

#### Ensuring a *sustainable* environment

Human life depends on the natural environment. Environmental degradation that affects plants, animals and the weather therefore ultimately impacts the livelihoods of families and communities in which children grow up, and their ways of living. Examples include the burning of fossil fuels, and mining activities and deforestation that damage ecosystems and their services. While all children can be affected by such harm, children from communities that retain traditional lifestyles are particularly vulnerable, as their economic, social and cultural practices are deeply rooted in the environment.

The conservation of the natural environment is essential for realizing the rights to life, survival and development, health, food, water, an adequate standard of living, and cultural participation. The long-term availability and accessibility of these rights is closely linked to the notion of sustainable development. Children's rights have a key role to play in highlighting the importance of intergenerational responsibility and prudence in protecting the environment, healthy ecosystems and managing natural resources.

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<sup>20</sup> In one country, for instance, the vast majority of artisanal and small-scale gold mines rely on mercury. Most operate without licenses. Government authorities hardly monitor conditions in the unlicensed sites and do not promote alternatives to mercury. Millions of children worldwide suffer from mercury exposures. Human Rights Watch

<sup>21</sup> E.g. related to adequate protection equipment in agriculture or artisanal mining.

### Obligations

In his presentation, Tom Weerachat of the Mekong Youth Assembly noted that States have a corresponding duty to protect children's livelihoods by ensuring sustainable environments. The use of and benefits from e.g. ecosystem services should not compromise the ability of current and future generations of children to exercise their rights.

For example, both the right to water and the right to food require States to adopt approaches, strategies and policies, and establish institutional arrangements, to ensure that communities have access to sufficient water and control over natural resources for long-term food production<sup>22</sup>. These measures may include action plans to reduce resource depletion through unsustainable extraction; regulations to ensure that developments do not interfere with equitable access; monitoring and assessment of how climate change, desertification, pollution, deforestation etc. affect water and food availability; as well as implementation of educational measures. These measures should consider children's specific vulnerabilities in the context of environmental degradation. States also have a duty to protect children from the adverse impact of businesses activities, including by transnational companies, affecting natural resources necessary to sustain their livelihoods.

### Challenges

DGD discussions referred to a number of human activities that disturb or exploit the environment and thereby interfere with the rights of the child. Large-scale projects like dams, mining or road construction, for example, can damage ecosystems and their services by cutting through and interrupting natural environments and destroying the balance of living organisms. Tom Weerachat reported about the adverse effects - including malnutrition among children - that damming and other development projects have had on the Mekong river, the source of subsistence and cultural identity for millions of people.

Deterioration of the environment on a 'local' level contributes to global challenges such as climate change. Climate change acts as a threat multiplier, compounding problems with food and nutrition as well as water insecurity, and making it even harder for poor households to secure their rights<sup>23</sup>. 'Water and climate variability are inextricably linked, as the effects of climate change are first felt through access to water. Flooding and storms can wash away water supplies, or leave them contaminated, putting the lives of millions of children at risk (...). Many of the regions most at risk of drought and flooding already have very low levels of access to water, and the 60 million children living in these areas are extremely vulnerable'.<sup>24</sup> Children's right to food is also under threat as climate change will significantly affect crop productivity. The WHO estimates that climate change will lead to nearly 95,000 additional deaths per year due to under-nutrition in children aged 5 years or less by 2030, and an additional 24 million undernourished children by 2050.<sup>25</sup>

Climate change has other, more indirect impacts on the ability of governments to protect children's rights. For example, 'in Bangladesh, (...) some families have rushed to marry off

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<sup>22</sup> Center for International Environmental Law / FIAN International

<sup>23</sup> Mary Robinson Foundation

<sup>24</sup> UNICEF

<sup>25</sup> A written submission for the DGD noted that in one region climate change, along with other development challenges, has limited local indigenous communities' access to basic resources: 'As a result, many children have become sick because their families are unable to provide them with sufficient food and clean water. Girls often walk extremely long distances to dig for water in dry riverbeds, exposing them to dangers along the route and leaving them with less time to attend school or rest'. Human Rights Watch

(...) girls in anticipation of losing their homes to river erosion'.<sup>26</sup> Furthermore, by aggravating existing inequalities in the use of and access to productive land and freshwater, both ecosystem and climate change can cause violent conflicts, school drop-outs, exploitation, and large-scale migration ('displacements'). Climate change poses an existential threat to indigenous children due to their close relationship with the environment.<sup>27</sup>

#### Policy gaps

In response to the increasing threats to biodiversity, natural resources and ecosystems in the past decades, the global community has taken a number of important actions. The Convention on Biological Diversity recognises the different levels of significance of biological diversity: the intrinsic value of biological diversity, but also the values it has for humans. SDGs 14 and 15 of the 2030 Agenda for Sustainable Development call on States to sustain both 'Life on Land' and 'Life below water' as a precondition for human well-being. And most recently, governments have concluded the Paris Agreement to combat climate change.

But several participants highlighted that there is a gap in assessing national and international policies related to biodiversity, climate stability, ecosystems etc. from a child rights perspective, despite their relevance. A rights-based approach to protection of ecosystems and access to natural resources should further the realisation of children's rights – such as the rights to life and development, food, water, and culture, and positively impact the valuation and conservation of nature. It should also create opportunities for participation of children in environmental protection and decision-making.

The urgency of a rights-based approach to environmental degradation was most clearly expressed with regard to climate change. As Kelly Matheson<sup>28</sup> noted: 'The UNFCCC was established to ensure the widest possible cooperation from all countries to keep the atmosphere healthy for present and future generations. Yet decades on, we have failed to take the actions needed to stabilize our climate system (...)'.<sup>29</sup> When determining the level of climate protection, States should take into account the rights and best interests of the child, especially the right to life, survival and development.

#### Ensuring child-friendly *play* environments

The realisation of the right to play and leisure is strongly influenced by the environment in which children live. Opportunities for play, learning and social interactions are determined by the quality of the spaces children can access, whether natural or built, provided or 'immediate'. Discussions highlighted the various benefits children derive from being able to play in natural environments and the animal world, including for their health and the development of mind, body and spirit.

Today, most children grow up in urban, often densely built areas. The quality of their play opportunities depends on human activity, design and planning. One contribution emphasized the importance of designated play and other open spaces (e.g. parks) as an important part of the mosaic of children's lives in such environments. 'Designated play spaces should be understood as having both symbolic and practical value. However, a problem arises when far from enabling play, these spaces are assumed to be the spaces in which play should take

<sup>26</sup> Human Rights Watch

<sup>27</sup> OraTaiao

<sup>28</sup> Our Children's Trust

<sup>29</sup> Just Planet

place, allowing play to be designed out of the wider environment or as a smoke screen used to exclude children from public space'.<sup>30</sup>

A list of places provided for play does not reflect the range of environments in which children actually play. Those may include the street outside a child's home, spaces temporarily claimed by children and spaces disregarded by adults. As one submission emphasized: 'The vast majority of children can only play in their immediate environment and so the right to play depends on the right to be able to access the outdoor environment in which they live (...).' When thinking about actions and policies, priority should therefore be given 'to children 'playing naturally' rather than having to wait until 'natural play' facilities can be established (...). We are only going to be effective if we realise that play is an environmental issue'.<sup>31</sup>

While recognising the different contexts and circumstances which limit children's right to play, participants agreed that children's freedom to play outdoors has been diminishing in recent decades. Children growing up in cities face 'numerous manmade obstacles that thwart their natural drive to play. In urban areas, children's activities are increasingly regulated, access to space is limited and everyday freedoms are taken away(...)'<sup>32</sup>. With around 70 per cent of the world's populations living in cities by 2050, children's opportunities to play will be partly determined by how governments address children's rights and the environment. Yet urban planning processes are often short-sighted, ineffective and weak, and result in development that is neither sustainable nor child-friendly. 'Children's perspectives on urban environments are all but absent'<sup>33</sup>.

Ensuring a connection with the natural world

Children's ability to interact with the natural world is an emerging aspect of the relationship between children's rights and the environment. Connection with nature is an underlying determinant of the rights of the child to development, health, cultural participation, education, the rights of minorities and indigenous children, the enjoyment of family life and the right to play and leisure. Studies have shown that natural environments benefit the well-being of children in various ways. Children's social, psychological, emotional and physical health and development are positively impacted by exposure to nature. Reduced stress, enhanced creativity, problem solving capacity and improved social relations have all been linked to outdoor learning. In her presentation, climate youth activist Rekha Dhillon-Richardson expressed the kind of joy and spiritual wonder children can experience when in nature. Indigenous or peasant children who have close cultural ties and commitment to and traditional knowledge of their territories, have a right to maintain this bond.

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<sup>30</sup> International Play Association

<sup>31</sup> Rob Wheway

<sup>32</sup> Paul Hocker. The written contribution further described how urbanisation impacts children's opportunity to make 'play on the way' experiences in the city of London: 'The walk to school is an important part of child development (...). Today, however, parents in London are unlikely to let their eight or nine-year-old make the short walk to school without evidence that the threat posed by traffic has been reduced to an acceptable level.' A recent study found that in 2010 433 primary schools out of 1777 exceeded EU limits for NO2 pollution. Of these 82% were in deprived communities. Furthermore, play space in London is shrinking and there is little legislation to protect the spaces that children need. As a consequence of these challenges, almost a third of London's children is not getting out to play every day.

<sup>33</sup> Tim Gill

However, children find it increasingly difficult to get access to spaces where they can come into contact with nature. Global developments such as growing urbanization, expanding human populations, land and resource consumption, deforestation, and biodiversity loss all contribute to a worldwide decline in the quality and quantity of children's direct sensory experience of the natural world and opportunities to encounter healthy and abundant ecosystems. The absence of nature in a child's life is associated with a range of health issues, including the rise of obesity, attention disorders and depression. Damage to the environment, flora and fauna, can negatively impact children's emotional health and sense of belonging and identity. It can even result in what might be called a 'nature deficit disorder'.

The following example of this condition was shared on the day: After the nuclear accident in Japan (2011), children living in Fukushima were forbidden to touch any mud, bugs or plants or eat fruits for a couple of years. Kindergartens that still operated in the area stopped farming and other outside learning experiences, and teachers were discouraged from planting activities. Several kindergartens made efforts to provide indoor activities emulating natural settings, others bussed children to areas with low contamination where they could take part in outdoor activities. However, even after being encouraged children refused to touch the soil with their hands, since up to that point in their lives they had been prohibited from handling ground soil. Children are now scared of insects. They grow up without the learning excitements of exploring nature<sup>34</sup>.

Certain participants felt that the challenges arising from the increasing alienation of children from nature are not adequately reflected in the current understanding of children's rights<sup>35</sup>.

#### 4.2. Children as agents of change

##### Access to environmental information

DGD discussions emphasised the importance of children's and their parents' right to know about environmental risks. Access to environmental information is essential to the protection of children's rights to health, food, water, housing etc. Furthermore, children depend on information to be able to exercise their rights to freedom of expression, to be heard and participate in environmental matters. This can range from making everyday personal choices to developments in the community. Available information, to be useful, should be understandable and appropriate to children's age and educational level and meet the needs of all children. The right to know in environmental matters has to be balanced with the right to privacy, because the disclosure of information e.g. related to environmental exposures can also cause harm to children<sup>36</sup>.

A number of contributions focused on children's participation rights in the context of environmental research. Engagement in research and civil activities of children and parents are crucial to monitor harmful exposures, raise awareness and improve environmental policies. Moreover, it was emphasized that all children, including groups in vulnerable situations, have the right to be well represented in research and monitoring as findings

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<sup>34</sup> Shokei Gakuin University

<sup>35</sup> 'It is such an unprecedented phenomenon in the history of mankind, and the consequences are so unpredictable and comprehensive that it needs its own position in the CRC'. Annelies Henstra

<sup>36</sup> IS Global

become relevant in policy-making<sup>37</sup>. If provided with adequate pedagogical, scientific, and logistical support, children are ideally placed to identify and investigate environmental issues affecting their communities from a bottom-up perspective, grounded in an understanding of local contexts<sup>38</sup>.

States are duty-bound to make environmental information available and accessible, in a form that functions to protect the rights of those most at risk including children. Child-specific disaggregated data must be available to account for differences in harm among specific groups of children<sup>39</sup>. Businesses should as part of their child-rights due diligence generate and disclose information related to environmental risk factors and communicate about the measures taken to mitigate potential harm. Parents bear a special responsibility as mediators between their children and the environment and should be made more knowledgeable and aware of environmental issues. But discussions underscored that providing children and parents with environmental information does not absolve governments of their primary responsibility to protect the environment. While certain environmental exposures are modifiable through lifestyle management others require action by states or the business sector.

#### Gaps

Participants identified a number of deficits that pervade the implementation of children's right to information in environmental matters, including lack of proper legislation and monitoring of environmental harm.

Children's right to information does not always receive adequate attention in laws and policies related to the environment, whether at the international or the national level. Children's access to information is expressly taken into account in the Stockholm Convention, one of three multilateral environmental agreements regulating hazardous chemicals and wastes. It calls upon States to promote the development and implementation especially for children of educational programmes on persistent organic pollutants. However, the provision hardly recognizes access to information as an entitlement and gaps remain concerning other Conventions<sup>40</sup>. It was further emphasized that in many countries, laws to ensure freedom of information, even if simply to facilitate information for children about pollution levels in their homes and communities, or to ensure local people are informed about proposed natural resources development plans, are still lacking.<sup>41</sup>

There is no doubt about the link between environmental harm and the violation of children's rights, but often data that would specify environmental impacts on children's lives now and in the future is missing as a result of inadequate monitoring mechanisms. Some of the challenges concerning data availability include lack of robust children exposure data taking into account their vulnerabilities and real-life conditions ('actual exposure'); lack of longitudinal data that relates environmental harm and children's health and development in different life stages; lack of disaggregated data on children most at risk; lack of information about adverse impacts resulting from loss of biodiversity, resource depletion and degradation of ecosystems; and the lack of integration of environmental, health, and social data.

Other factors further compound the lack of access to environmental information. Relevant data is frequently kept confidential, especially when business activities are involved. Even if

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<sup>37</sup> IS Global

<sup>38</sup> SieNi – Education for Water Protection in Colombia

<sup>39</sup> Baskut Tuncak

<sup>40</sup> Secretariat of the BRS Conventions

<sup>41</sup> International Development Law Organization

information is available and accessible, children and parents are often unable to comprehend, assess and use the information to prevent harm. Children are not necessarily targeted by specific information programmes or materials. Furthermore, communication about environmental issues in the mass media does not currently reach young people to the extent it could. Sometimes, responsible governments or businesses even lead miscommunication campaigns to conceal environmental harm caused to children<sup>42</sup>. On the other hand, civil society organizations and other relevant actors should strengthen their efforts to make the policy case: Even where evidence of violations of children's environmental rights exists, it is not always gathered, presented and disseminated adequately. Moreover, lack of coordination leads to the non-availability of e.g. health case studies in environmental law databases.

Deficits related to the right to information were seen as a real barrier to the protection of children's rights in the environmental context and for holding duty bearers accountable. Missing data gives rise to uncertain health risk and impact assessments, which results in insufficient planning and protection measures, and exacerbates the burden of proof in judicial cases. Given the difficulties to ensure access to environmental information on and for children the focus of solutions should be geared towards preventive and precautionary measures, as some participants argued<sup>43</sup>.

#### Environmental impact assessments

As an established tool in environmental governance, environmental impacts assessments (EIA) can play a significant role in protecting children's rights from harm. This includes both impact assessments of legislative, policy, and action plans and impact assessments of individual projects<sup>44</sup>. There are many new regulations systematizing the use of EIA, yet gaps remain as there are very few examples that refer specifically to children's rights and intergenerational justice. Public participation, even where legally mandated is still often weak and patchy and rarely involves children. Furthermore, impact assessments do not always adequately address the link between social-structural issues and environmental degradation. As a result, poor children face environmental injustices which are 'frequently cases of cumulative impacts of environmental inequalities'<sup>45</sup>. It was further emphasized that impact assessments often do not work very well, because they are carried out under the control of companies that are commissioning them. Supply chains can create extra difficulties in this respect. Juliane Kippenberg<sup>46</sup> noted that such assessments rarely involve human rights experts let alone child rights experts and 'end up being a checklist that has very little to do with child rights realities'.

In his presentation, Dr. Daniel Limpitlaw<sup>47</sup> reflected on the specific challenges of environmental impact assessments in the mining sector. He stated that mostly assessments do not take explicit account of children's rights ('children are not front of mind'). Their special vulnerability relative to adults is not necessarily addressed, while vulnerable groups of children are often not adequately reflected in surveys. There is also a high risk of missing key data as children's views are not included in stakeholder participation. Dr. Limpitlaw further highlighted the negative effects of silo thinking. Social scientists would typically only look at the social impacts of a proposed project, while biophysical scientists were mainly focused on

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<sup>42</sup> Crude Accountability

<sup>43</sup> Baskut Tuncak

<sup>44</sup> Angeliki Papantoniou

<sup>45</sup> International Development Law Organization

<sup>46</sup> Human Rights Watch

<sup>47</sup> Mining Consultant

ecological aspects. This is a problem because significant impacts on children occur at the interface of social and environmental factors.

#### Environmental education

The right to environmental education as enshrined in Article 29 of the CRC was a reference point in all DGD discussions. Education was seen as children's main source of gaining environmental information. It was further stressed that education plays a significant role in empowering children to become actors of change and defenders of the environment, young "eco"-citizens as it were. Conversely, a connection with nature was considered integral to a holistic education. Environmental education should be a requirement for all relevant institutions, including kindergartens, pre-schools, schools and extracurricular youth education, and should involve all relevant stakeholders such as parents, scientists, communities and the business sector.

#### Elements of rights-based education in the environmental context

Several contributions described 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) Sensitizing children to the value of nature's resources, and their conservation, will help them recognize and defend their environmental rights both for current and future generations. 3) Age-appropriate methods combined with localized 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. At the same time, children should not be burdened with the responsibility to protect the environment<sup>48</sup>.

Brianna Fruean focused her statement on what education should look like in the climate context: 'All curriculums should include a clear, comprehensive and frequently updated climate change education. As weather patterns changes so should our curriculum to match the new challenges our climate faces. This education must be altered in different countries so information is relevant to every child's situation. Also keeping in mind the inclusion of traditional knowledge and teachings, as it is of great importance to many traditional societies in rural areas as they have little to no financial means or informative resources to adapt to the effects of climate change (...). We must also remember normal 'classroom and teacher' formal education is not the only form of education. Children must be given means of educational tools such as practical activities and field trips to spark interest and ideas. Government and stakeholders can give children the platform to start environmental groups, publish books for children by children, be involved in big Conference of Parties (COPs) giving their opinions, translate formal UN documents to child friendly language (...)'.

To varying degrees, governments, schools and other relevant actors already address environmental issues through a variety of educational measures, sometimes even as an important priority. Some educational programmes are designed as an explicit response to local or national environmental problems or grow out of a concern for environmental

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<sup>48</sup> Instituto de Promocion Economico y Social del Uruguay

stewardship<sup>49</sup>. The inclusion of environment-related topics in school curriculums is a very common route to inform about the environment. Other typical measures include practical activities such as school gardening or participation in “eco-clubs”.

At the international level, the 2030 Agenda for Sustainable Development creates a new reference point for environmental education. SDG 4, Target 7, calls upon States to ensure by 2030 that all learners acquire the knowledge and skills needed to promote sustainable development, including through education for human rights.

#### Gaps

Discussions revealed a number of serious deficits that keep children from receiving environmental education as a right. Children growing up in heavily polluted or otherwise degraded environments too often lack even basic awareness of risks involved as curricula are not responsive to the local context. There is limited scope for reflection and exploration of problems, skill development and involvement in potential solutions. Similar challenges concern children everywhere. Furthermore, it is not clear, as some participants pointed out, what role Article 29(1)(e) plays in States’ efforts to promote environmental education. Measures are not necessarily ‘articulated (...) in human rights terms and not promoted as an entitlement for every child as critical agents of change.’<sup>50</sup> Multilateral environmental agreements such as the Paris Climate Agreement mention educational measures but without specific reference to children’s rights.

Throughout discussions it was stressed that the development of respect for the natural world begins with children enjoying and experiencing nature. Knowing and understanding the environment as well as having a connection with it are prerequisites for children to be able to and have the wish to protect nature. The significant decline in the quality and quantity of time children spent in the environment was seen as a major obstacle to the realisation of Article 29(1)(e) of the CRC.

#### Participation in environmental matters

Children are often extremely passionate about the need to protect the environment and can be effective environmental champions. Several child and youth activists spoke on the day about their actions and shared their views on the environment. Getting involved in nature conservation is one of the foremost ways for children to protect and realise their rights in the context of the environment. The right to participation includes having the right to be heard and taken seriously by governments on different levels in regard to environmental laws, policies and practices. For example, when balancing economic, environmental and social interests before, during and after development projects governments have a duty to include the views of those children affected by them.

Certain participants raised concern regarding the involvement of children in decision-making and environmental protection as it was not right to expect them to address the damage that has been done by adults. Rather than increasing their participation, adults should act and ensure that they leave for their children a planet, on which they and their children can live<sup>51</sup>.

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<sup>49</sup> World Future Council

<sup>50</sup> Alex Tennant

<sup>51</sup> Rob Wheway

Sometimes children are in situations where it is not possible to hear their views on the environmental matters in question. Baskut Tuncak pointed out that children ‘are exposed to harmful substances before they are capable of forming their own opinions, and this is in the period in their lives when they are most at risk from toxic exposures that can lead to the development of associated diseases, disorders and illnesses’.

Lack of access to decision-making opportunities

Although there have been a number of good local and national examples of children’s engagement in environmental decisions-making, in most parts of the world children’s voices are completely disregarded. There is also a knowledge gap regarding systematic efforts by governments to allow children access to decision-making at the local and national level, with few best practices available. Children’s participation on environmental matters has been formally recognized in different fora at the international level. As was pointed out on the day, Sustainable Development Goal (13) target 13(b) on climate change looks to ‘*promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries*’, including by focusing on youth. In 2012, States Parties to the Convention on Biological Diversity recognized the importance of youth participation in decision-making processes. However, despite the rhetoric from world leaders, children’s concern for the environment is not reflected in the degree to which they are able to participate meaningfully in decision-making on a wide range of global environmental issues that matter to them now and the future.

Obstacles

The DGD highlighted some of the key obstacles and challenges which children face in becoming more involved. Children’s capacities, competencies and experiences in responding to environmental issues are rarely recognized as being relevant. Both children and the environment are perceived as objects of protection, which significantly limits children’s influence on decision-making. In many cases, there are formal requirements and legal restrictions that prevent children from participation in decisions on environmental matters. Sometimes children are heard on environmental matters, but not taken seriously. Companies often use child and youth consultation to ‘greenwash’ their activities. And while the ‘youth’ is increasingly included as a stakeholder group in environmental matters, younger children are often left out.

It was emphasized that current institutional frameworks discourage children from taking part in environmental policy-making because they are complex, technical and expert-based and do not address environmental issues relevant to them<sup>52</sup>. There is a general lack of platforms to support children’s full and meaningful participation in environmental affairs such as climate dialogue and initiatives. Children also often lack knowledge about specific opportunities for voluntary work and relevant points of contact.

Further problems arise because consultation processes addressing controversial issues such as development projects affecting communities’ access to natural resources often take place in child-unfriendly settings. Children activists can even be threatened or harassed. Tom Weerachat shared the case of a girl that was sued for defamation by a mining company after she had expressed her concerns over water pollution due to extractive activities on TV.

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<sup>52</sup> Ivana Šavic

### Access to justice

Access to justice in environmental matters is extremely relevant as climate change, pollution and resource depletion will profoundly affect the quality of life of current and future generations of children. Moreover, children's voices and interests are systematically disregarded in environmental decision-making meaning that going to court can be the only option to defend their rights. Veronica Yates<sup>53</sup> stated that 'ensuring children's access to justice is not only crucial to address the harm already caused, but also for preventing the recurrence of rights violations and ensuring future laws and policies are rights respecting'. On the other hand, children are often left without access to justice in environmental matters, which is why prevention may be the best and often only means of ensuring access to an effective remedy for them<sup>54</sup>.

An effective remedy has several components, including the right to equal and effective access to justice, prompt reparation and access to information concerning violations and reparation mechanisms. In the context of human rights violations resulting from environmental harm, reparation includes adequate compensation, rehabilitation of those affected including through access to adequate care, guarantees of non-repetition through the implementation of preventative and precautionary measures, remediation of affected areas and cessation of harmful actions. General Comment No. 16 on children's rights and the business sector<sup>55</sup> emphasizes the relevance of timely reparation for environmental rights violations given the risk of irreversible and life-long damage.

Access to justice remains a huge challenge for children in any setting, including in the context of environmental litigation. Some of the multiple barriers to access justice were discussed on the day:

### Standing

Environmental damage often results from complex structural challenges affecting whole communities and may take decades to manifest. Requirements that individuals must be directly affected or have a sufficient interest along with the lack of collective complaints mechanisms mean that often children have practically no means of asserting their rights in the environmental context. There have been a few examples where courts have recognized 'intergenerational justice'.<sup>56</sup> Our Children's Trust has pursued legal actions against US government agencies in all fifty states over insufficient action to secure a stable climate for all generations and protect public trust resources. In November 2016, a judge at the U.S. District Court ruled, over the objections of government and energy-industry lawyers that the Oregon suit could proceed granting standing to youth aged between 9 and 20 because their rights to life, liberty, and property were at stake<sup>57</sup>.

<sup>53</sup> Child Rights International Network

<sup>54</sup> Baskut Tuncak

<sup>55</sup> CRC/C/GC/16

<sup>56</sup> In 1992, 43 children appealed to the constitutional court of the Philippines against their own government on behalf of future generations to stop the clearing of the rain forest. The court allowed the petition because it found 'no difficulty in ruling that they [the petitioners] can, for themselves, for others of their generation and for the succeeding generations, file a class suit [...]', in order to protect the rain forest. See *Minors Oposa vs. Secretary of the Department of Environmental and Natural Resources* (<http://hrlibrary.umn.edu/research/Philippines/Oposa%20v%20Factoran,%20GR%20No.%20101083,%20July%202030,%201993,%20on%20the%20State's%20Responsibility%20To%20Protect%20the%20Right%20To%20Live%20in%20a%20Healthy%20Environment.pdf>).

<sup>57</sup> <https://www.ourchildrenstrust.org/us/federal-lawsuit>

#### Burden of proof

Environmental suits place an often ‘insurmountable burden of proof’ on children and not on the actors whose activities cause them harm. It can be very difficult to establish direct causes of harm as the consequences are not always quantifiable in every individual case or have to be separated from other factors. Given that relevant information is often either not available or accessible victims may lack awareness of their exposure to environmental risks or provide insufficient evidence. Even if information is available, the complexity of e.g. environmental impact assessments makes it difficult for child victims and their representatives to comprehend the facts. In addition, justice sector professionals can lack adequate knowledge about children’s rights and their relationship with the environment.

#### Limitation periods

Strict time limits on when a case must be submitted can present a serious barrier to children accessing remedies, particularly for young children who may not be able to approach the courts until they have reached the age of majority. With regard to environmental litigation, gathering evidence that can incriminate a perpetrator or which establishes causation of a given illness may no longer be possible after any substantial amount of time has passed. Indeed, this is near impossible in cases where adverse health effects of an environmental problem manifest many years after exposure, and more so when a health problem becomes hereditary.

#### Financial Burden

Legal aid is practically non-existent for the kinds of civil or public interest administrative cases that are likely to be used to bring environmental cases. From the onset, certain groups of children face this financial burden in particular, especially when they oppose large corporations with financial clout. In some cases, States have been accused of attempting to deter organisations and individuals from bringing environmental suits by increasing the cost of litigation<sup>58</sup>. Additionally, complainants who lose an environmental case deemed to be in the public interest can incur considerable costs<sup>59</sup>.

Even if environmental litigation is successful, years may have passed and the impact of environmental harm may have become irreversible or resulted in lifelong damage. Sometimes remedial measures are not effectively implemented due to a lack of political will or resources and weak rule of law. Lower- and middle-income countries are frequently not equipped with the institutional capacity and funding to effectively remediate contaminated areas resulting in continued exposure of children living in surrounding areas. Baskut Tuncak noted that ‘inability to ensure a child’s views are heard before they are exposed to hazardous substances, and the impossibility to realize a truly effective remedy after exposure, strongly imply that States prevent exposure.’

#### 4.3. Vulnerability and discrimination as cross-cutting issues

The specific vulnerabilities of children - by virtue of their evolving physical and mental development and their status within society – were consistently raised during the DGD. Yet

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<sup>58</sup> Priscila Bribiesca-Rodriguez, Earth Defenders, presented the case of 113 children who filled a complaint against the clearance of a mangrove forest for a real estate project claiming a violation of their right to a healthy environment. A judge ruled that the children should pay a bond of USD 1.2 million to guarantee the potential damage caused to the investors if the project stopped.

<sup>59</sup> Child Rights International Network

while all children are vulnerable to environmental harm, some face additional risk factors. For instance, indigenous children may face a double vulnerability due to their close relationship with the environment. Other particularly vulnerable groups include children working in hazardous conditions and those living in contaminated environments.

Age, biology and behaviour are among the factors that determine children's vulnerability to environmental risks and should be given special consideration. The physiological features that distinguish children from adults and explain their unique vulnerability to environmental harm include the need for more food and water per unit of body weight; the immaturity of the blood-brain barrier and nervous system; a different rate of organ systems growth; a larger surface area relative to body weight; a faster breathing and higher heart rate; and a different metabolic capacity. If a child is exposed to environmental toxicants during a period of rapid growth and development, this may put the child at a greater risk of developing disease.

Children are also impacted in ways in which adults are not. This includes involuntary exposures during foetal development and breastfeeding, child-specific behaviours (outdoor activity, hand-/object-to-mouth behaviour), and movement in different exposure zones (e.g. nearer to the ground). Children are at increased risk from environmental hazards because they cannot control their exposures, especially in the most vulnerable periods of their life, when they depend on their parents or caregivers' awareness, knowledge and capacity to protect them.

Besides their heightened behavioural, developmental and physical vulnerabilities, children are the least empowered to exercise their rights to information, free expression and be heard as well as justice when their rights have been violated. Marginalized groups of children bear a disproportionate burden of the inaction on the environment, implicating the principle of non-discrimination.

Children's differential risks and discrimination are not always duly considered in policy-relevant assessments, standard setting and the identification of priority concerns related to the environment. Environmental laws typically describe children as a vulnerable group, not as rights holders, while vulnerability is primarily understood as a biological condition. Children do face additional vulnerabilities relative to adults, but they should not be defined by them. The 'protective paradigm' will do little to achieve recognition of their competencies and experiences, nor will it increase children's resilience and capacity to protect themselves from harm and participate in environmental matters in line with the Convention. Involving children will also help define vulnerabilities and ways to address them.

## 5. Roles and responsibilities

### Government

States have a heightened duty to protect children against environmental harm. This requires comprehensive steps, as described above, but unfortunately concern for children's rights remains largely absent from environmental protection efforts - often due to lack of political will or resources - resulting in inaction or problematic responses in the face of risks. The lack of integration between environmental and human rights law and policy adds to this failure.

### The lack of a child rights approach

The neglect of children's rights is reflected in a double deficit in legislation and policy: The Convention on the Rights of the Child is overlooked in setting and implementing environment-related policies and standards, while laws, policies and actions relevant to children's rights do not take adequate account of environmental factors. 'This gap hinders

rights-based approaches to environmental problems affecting children'<sup>60</sup>. In his recent report, UN Special Rapporteur Baskut Tuncak points out that '(t)he best interests of the child are best served by preventing exposure to toxic chemicals and pollution, and taking precautionary measures with respect to those substances whose risks are not well understood. Unfortunately, industrial competitiveness, risk management options and cost-benefit considerations are prioritized over the best interests of the child'.

National laws, policies and standards on the environment infrequently address the rights of children. There seems to be a gap, for example, in assessing policies related biodiversity, natural resources and ecosystems from a child rights perspective. On the other hand, policies that are designed to address children's rights do not take adequate account of environmental issues. For example, national and local ombudspersons for children's rights or child protection officials typically have a very narrow mandate that does not include environmental issues<sup>61</sup>.

Multilateral environmental agreements (MEA) have also long ignored a human rights approach. Chemical and waste treaties like the BRS Conventions do not reference human rights obligations at all, including children's rights, despite their relevance. MEAs essentially follow a state-centred approach and often lack mandatory provisions and the language of entitlement in relation to health, informational or participatory measures. However, a greater integration of child rights and environmental issues is possible. A step in this direction is the 2013 Minamata Convention on Mercury, which requires treaty parties to develop strategies to prevent children's mercury exposure in the context of artisanal gold mining and provide access to information. The Minamata Convention also calls upon governments to monitor children's exposure, and provide testing and treatment.

Participants further emphasized the potential for better reflection of rights considerations in existing environmental agreements: 'Although this (vulnerable groups) may not explicitly be referred to in the convention texts themselves, it may be addressed in the way Parties implement the Conventions, as well as the decisions adopted by their governing bodies'<sup>62</sup>. The common implications for states in terms of their duty to protect the rights of children under the CRC and MEAs should be made more explicit. This should include rights such as the right to play, which protect interests beyond the immediate health impact. For the environmentally sound management of chemicals and wastes to be in line with the best interests of the child, there is still a long way to go: Less than 30 environmental chemicals out of thousands of hazardous substances are managed through their life cycle - from manufacturing to final disposal - under existing treaties<sup>63</sup>.

The Paris Agreement on climate change and the 2030 Agenda for Sustainable development take a more integrated approach to human rights and environmental issues. Even though certain participants felt that the Paris Agreement neither resolves nor ameliorates the unfolding crisis, others saw it as a significant advance in addressing climate change and for taking into account children's rights in the framework of global climate action. All voices agreed that more needs to be done to enhance the role of children's rights in this context. Joni Pegram noted: 'Consideration of the Convention on the Rights of the Child remains largely absent from climate-related policies, action, investments and dialogue (e.g. intended nationally determined contributions). There is an urgent need for the best interests of the child

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<sup>60</sup> Human Rights Watch

<sup>61</sup> Crude Accountability

<sup>62</sup> Secretariat of the BRS Conventions

<sup>63</sup> Baskut Tuncak

to be systematically applied in shaping national and international responses to climate change. A key challenge remains environmental decision makers' lack of awareness and expertise in relation to child rights'. More robust guidance is needed to define the elements of a child-rights-based approach to climate change as governments seek to implement action which pertains to tackling climate change under the Sustainable Development Goals, the Paris Agreement and the Sendai Framework for Disaster Risk Reduction.

#### Lack of cooperation and coordination

The parallel development of environmental law and human rights law has contributed to a lack of coordination between institutions dealing with child rights and environmental issues within both governments and the United Nations. This coordination gap is one of the reasons for inadequate monitoring and accountability for child rights violations that relate to the environment. As Juliane Kippenberg<sup>64</sup> stressed: 'United Nations agencies such as the United Nations Environment Programme, the United Nations Development Programme, and the United Nations Framework Convention on Climate Change have not made environment-related child rights central to their agenda, and infrequently coordinate with UN agencies with expertise on child rights. Children's rights are therefore absent from the policy frameworks and actions that UNEP, UNDP, and UNFCCC use to guide and inform government laws and policies'. Conversely, the UNICEF but also the Committee on the Rights of the Child have only just begun to address environmental issues more comprehensively.

At the national level, government ministries for the environment or other ministries taking environment-related decisions often do not coordinate with ministries responsible for children's rights<sup>65</sup>. The Committee's own work is negatively affected by this lack of coordination: States Parties scarcely mention environmental issues in their periodic reports. Systematic reporting duties on national experiences linking children's rights and the environment were seen as a way to promote greater collaboration and coordination between the different actors at the national level.

There are also negative forms of cooperation. Baskut Tuncak noted that in one country that highly depends on extractive industries the government decided to abolish the ministry for the environment and assigned all matters related to environmental health to the ministries for energy and the economy. Corruption is another form of bad cooperation. This particularly affects children as they rely on the authority and integrity of their parents, the community, teachers, doctors and government<sup>66</sup>.

#### Funding, Capacity-Building and Training

Environmental agencies, especially in lower- and middle-income countries, often have limited capacity and inadequate funding to provide adequate protection against environmental harm (e.g. to monitor pollution or mobilize resources for climate adaptation). This includes the implementation of obligations under multilateral environmental agreements. When environmental regulation is carried out at the state or local level of government, the situation can be more difficult. Participants emphasized that 'organizing and developing technical

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<sup>64</sup> Human Rights Watch

<sup>65</sup> Baskut Tuncak shared an illustrative example: In one country he had visited the government had not set standards for the level of heavy metals allowed to be contained in artificial grass that was widely used in schools. Soccer players reported illnesses, after they had played on artificial surfaces for years. There was no clarity on whether the ministries for education, environment or health were responsible for the case. In the end, no one looked at the issue properly.

<sup>66</sup> Crude Accountability

assistance and capacity building tools and events, which focus on children's specific conditions' may effectively contribute to better protection of their rights<sup>67</sup>. International agreements can play a positive role in this context because they are implemented at the national level and action is taken because a particular treaty sets out obligations and funding, and promotes international cooperation and assistance.

#### The role of the business sector

Business activity is the source of significant environmental damage that contributes to child rights abuses. Nearly every business sector is directly or indirectly involved in the production, use, release and disposal of hazardous substances, the extraction of resources or other types of environmental impact. Abuses of children's rights are linked to present business operations but also the legacy of environmental degradation from past activities and potential future harm. Business impacts on children's environmental rights can be local, national or global, as in the case of the major carbon polluters. Furthermore, businesses have economic, social and cultural impacts on children's lives. 'If such impact is negative, it can lead to further degradation of the environment'<sup>68</sup>. The communities affected by corporate abuses often belong to marginalized groups of society and find it hard to get their voices heard. On the other hand, industries can contribute greatly to the improvement of environmental conditions and work towards strong sustainability. The business sector therefore plays a key role in addressing environmental harm that interferes with the enjoyment of children's rights.

#### Regulation of the business sector

The duty of States to protect children's rights against environmental harm extends to the impact of the business sector. The Committee's General Comment No.16 provides a framework to ensure that businesses respect the right of the child, including effective legislation, regulation and enforcement, as well as policy, remedial, monitoring, coordination, collaboration and awareness-raising measures. States should require businesses to undertake child-rights due diligence and identify, prevent and mitigate their impact on the environment and children's rights including across their business relationships and within global operations. GC16 sets out clear and immediate steps to be taken by all parties in the event that children are identified as victims of environmental pollution to prevent further harm to their health and development, and to repair damage done in a timely manner.

There was wide agreement among DGD participants that child-rights due diligence should be mandatory given that voluntary actions by the private sector have not been as satisfactory as they should have been. Powerful business interests continue to hamper the development of sustainable and child-sensitive policies. As one written contribution emphasized: 'Agrochemical corporations profit from the production and sale of pesticides that are inherently poisonous while the world's rural populations and children face the daily hazard of pesticide poisoning'<sup>69</sup>. Law and enforcement could lead to more effective and sustainable solutions. However, governments often avoid regulating business, because it can be costly and is sometimes opposed by industries<sup>70</sup>. Sometimes governments even drive unsustainable

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<sup>67</sup> Secretariat for the BRS Conventions

<sup>68</sup> Ivana Savic

<sup>69</sup> Pesticides Action Network

<sup>70</sup> One example are concession agreements between states and transnational companies in the mining sector that are overly generous on the amounts of effluents allowed into the water and air. Another example are legal frameworks that do not provide for judicial or administrative mechanisms that can effectively sanction severe cases of pollution and lack mechanisms to protect affected children and repair damage.

policies, e.g. by investing in or subsidising fossil fuel development, specific agricultural practices and extreme energy infrastructure projects that negatively impact children's rights and the environment.

Polluting industries such as those responsible for waste recycling often exist in the informal sector and typically operate hidden from government oversight and with little awareness of the exposure risks and the hazards to public health, as acute health effects are generally not present. While their activities may be at times unsafe and polluting, such businesses are often the main employers in a given community. 'Closing informal operations without viable alternative livelihood options will drive them into other areas, where they will likely continue to pollute'. Rather, governments should ensure that 'urban redevelopment plans aim to support both the growth of small and medium-sized enterprises and their transition to cleaner, more environmentally friendly practices'<sup>71</sup>.

Participants generally recommended that States 'need to be supported and strengthened, so that they develop laws to properly regulate private sector activities with relation to the environment and children's rights, and they need to be strengthened, so that they hold private sector actors accountable. Some private actors under their Corporate Social Responsibility policies, conduct 'green-washing' initiatives, in which seemingly consultation with the affected population, including children, is conducted, but without any effect of their opinions and recommendations. Private sector actors need to be better informed about children's rights, the relation between children's human rights and the environment (...)'. Participants further recommended the development of an international legally binding instrument on human rights and the business sector. Such a treaty should ensure that all states adopt measures to ensure that companies respect human rights and undertake due diligence in their operations at home and abroad, and take adequate account of children's rights and the environment.

*Child-rights due diligence in the environmental context*

The basic elements of child rights due diligence in the environmental context were also discussed. Business enterprises should be required to prioritize the identification of child rights impacts from their operations and take adequate measures to prevent harm, given that children are particularly vulnerable to environmental harm and have great difficulties to realize their right to access justice.

Participants pointed out, however, that current risk assessment practice in the business sector does not adequately reflect children's rights. It was recommended that the Committee, by building on existing tools, could support the development of a methodology that integrates children's rights and environmental impact assessments. Such a standard could be mainstreamed in corporate activities<sup>72</sup>.

Companies should further take all necessary steps to avoid causing or contributing to impacts on the rights of the child through environmental harm, and address such impacts when they occur. This can require the modification, cessation or relocation of certain activities that present unmanageable or simply unknown risks to children<sup>73</sup>. A potential source of pollution, for example, should not be built next to schools or clinics. A stricter process of due diligence is required where there is a high risk that certain groups of children such as those working in hazardous conditions are exposed to environmental risks through business activities across

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<sup>71</sup> Pure Earth

<sup>72</sup> Ivana Savic

<sup>73</sup> Baskut Tuncak

supply chains. Preventive policies are not always standard in corporate child rights due diligence as numerous contributions to the DGD showed<sup>74</sup>.

#### The role of the Committee

While it was acknowledged that the Committee has recognized a variety of environmental issues as relevant factors to ensure the implementation of the Convention, participants also emphasized that 'additional steps are needed to secure the full realization of children's rights, particularly in the face of the growing environmental crises facing the planet'. The Committee could help bridge the current gap between the child rights and the environmental sector by providing clear and coherent guidance to States on how to apply children's rights in the context of the environment. Such guidance would provide NGOs and other relevant actors with a common standard to hold governments accountable. It would also facilitate the submission of environmental information to the Committee.

Discussions further raised some of the options available for further developing the interpretation of the Convention in relation to environmental matters. It was suggested, for example, that the Committee articulate the right of the child to a healthy environment as implied in the Convention on the Rights of the Child<sup>75</sup>. The articulation of such a right would help address aspects that are not adequately covered in the Convention such as climate change and children's ability to connect with nature.

Numerous voices proposed the drafting of a General Comment on children's rights and the environment as the most effective way to provide robust and harmonized guidance endowed with "longevity, visibility and the appropriate level of authority"<sup>76</sup>. A General Comment could, *inter alia*, serve to: highlight the threat of environmental harm to the rights of the world's current and future generations of children; define the elements of a child-rights-based approach to environmental issues, including by further clarifying state and business responsibilities required to uphold children's substantive and procedural rights; convey the relevance of the Convention to a wide range of actors working on child rights and the environment; and help strengthen their linkages. While participants agreed that the Committee should take further steps to guide on the relationship between children's rights and the environment, there was some concern that the body could be overburdened with responsibility given the severity and extent of the global environmental crises. To confront these challenges, a high level of ambition and the inclusion of a wide range of relevant actors is required. The Committee could play a key role in this regard by reaching out to relevant environmental organizations and experts.

#### The role of other relevant actors, including NGOs, professionals and academia

Human rights, environmental and other non-governmental organisations should more actively and systematically address the relationship between children's rights and the environment. Child rights organisations, for example, could integrate environmental issues in their own programmes, attend environment-related meetings like the Conferences of Parties of MEAs or

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<sup>74</sup> An example of this is the existence of double standards in the international trade of hazardous pesticides from developed countries to developing countries. On the day, Baskut Tuncak referred to a highly hazardous pesticide that killed 24 school children and injured many more. It was allegedly sold by a company based in one country where that pesticide had already been banned because of health risks.

<sup>75</sup> Center for International Environmental Law

<sup>76</sup> UNICEF

reach out to relevant environmental institutions such as the UNFCCC secretariat or the UNEP. When future agreements on the environment will be negotiated, child rights advocates should be present. The same approach can be followed at the national level. Conversely, environmental organisations should become more aware of the child rights approach.

Dr. Lilian Corra emphasized that the coalition of relevant actors should also include research institutes and academia, the sector of health professionals, lawyers, engineers, economists etc. working on the environment. Their capacity and influence is essential to move this important agenda forward. The exchange of good examples of cooperation, outreach and capacity-building could inspire learning processes in this respect.<sup>77</sup> Members of the Committee encouraged all relevant actors to submit more information on issues related to children's rights and the environment for the State review process under the Convention.

## 6. Recommendations

In light of the DGD objective of being a forum for raising awareness about and discussing children's rights in order to identify issues for States to take account of in their policies and programmes, as well as to provide guidance to other relevant actors on the protection of children's rights in the context of the environment, the Committee endorses the following recommendations. The recommendations, while mainly addressed to the primary duty bearers, States, also consider the role of other stakeholders, including the business sector, international organizations, civil society and the Committee itself.

### States

#### General Recommendations

- States must protect children against environmental harm that interferes with the enjoyment of their rights. Children's specific vulnerability and social status within society imposes a heightened duty on governments and policy-makers to make sustained efforts to effectively protect children from such harm, strengthen their capacities, take their views and competences into account and provide access to effective and timely remedies.
- States should ensure children's environment-related rights by realizing them in a sustainable manner such that they can be enjoyed by all current and future generations of children.
- States must ensure that all children have equal access to healthy and sustainable environments and nature. States must pay specific attention to the rights of children exposed to multiple factors of vulnerability as a result of environmental injustices, including girls, children with disabilities, poor children, and children belonging to indigenous or minority groups.

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<sup>77</sup> One DGD participant mentioned a good example from Belgium, where scientists, child rights NGO and doctors working have created a platform (Childproof) to facilitate more exchange on environmental matters.

- States should take steps to prevent causing or contributing to transboundary environmental harm that affect the rights of children abroad.

#### Legislation and policy

- States should develop an enabling legal and institutional environment for adopting a sustainable development pathway that adequately reflects the rights of the current and future generations of children. National laws, policies and actions as well as international agreements on the environment (e.g. Nationally Determined Contributions/National Mitigation and Adaptation Plans) should explicitly include measures relating to children's rights. In turn, laws, policies, and actions on children's rights should explicitly consider environmental risk factors.
- States should consider the best interests of the child as a matter of primary consideration when designing, implementing and monitoring relevant environmental laws and policies related to e.g. climate change, prevention of early life exposures, or safeguards for large-scale development projects.

#### Regulation of the business sector

- States' obligation to adopt adequate legal and institutional frameworks to protect children's rights extends to harm caused by businesses. In particular, States should require businesses to undertake due diligence in their operations and across supply chains with regard to the harmful effects of environmental degradation on children's rights.
- Children's rights should be integrated into national action plans on business and human rights, taking into account the business impact in the environmental context.
- States are encouraged to develop policies and plans (e.g. urban redevelopment plans) that support the transition to cleaner, more environmentally friendly business practices in line with children's rights.
- States are encouraged to lead by example and require enterprises bidding for large public sector contracts to disclose the steps they are taking to ensure that their activities and those in their supply chain do not negatively affect children's rights with regard to their impact on the environment.

#### Implementation and accountability

- States should strictly implement, enforce and monitor regulations designed to protect children from environmental harm and strengthen supervisory bodies in this respect. National human rights monitoring mechanisms should take into account the rights of the child in relation to a healthy and sustainable environment.
- States should take multisectoral action to protect children's rights from environmental harm and enhance cooperation and coordination among relevant actors including

health professionals, the environmental, education, labour, urban planning, transport, extractive, energy, and agricultural sectors.

- States should incorporate their child rights obligations when implementing relevant multilateral environmental agreements and policy frameworks. This should include the development of child-specific operational programmes, tools, technical assistance and capacity-building materials.
- States should set aside sufficient resources for the protection of children's rights in the environmental context.

#### Reporting

- States should incorporate the implications of environmental harm on the full enjoyment of the rights of the child in their Periodic Reports to the Committee, as well as the steps they are taking to ensure that children's rights are protected against such harm. This should extend to reporting on their efforts to consider child rights in the context of their action under relevant international environmental frameworks.
- States should also consider children's rights in their environmental reporting to the UNFCCC (e.g. national communications, Adaptation Communications), international agreements on chemicals and wastes and in reporting on implementation of environmental targets under the Convention on Biological Diversity and the SDGs.

#### Ensuring a healthy environment

- States should take effective measures to prevent childhood exposure to environmental harm, including through development of specific legislation and effective business regulation, and ensure access to health care for treatment. State Parties should adopt the precautionary approach in the face of uncertainty regarding children's environmental health risks. It is recommended that States cooperate internationally on regulating all toxic chemicals that are potentially harmful to children.
- States should take more active measures - guided by the rights and best interests of the child - to implement environmental health standards, indicators, definitions and age categories set by the WHO and other relevant international bodies.
- States should develop a national plan to monitor children's environmental health, conduct an assessment of risks, identify priority concerns, including children in vulnerable situations, and develop and implement measures to address those priority concerns (e.g. timely clean-up of contaminated sites). States should ensure that health professionals receive training in diagnosis and treatment of health impacts related to environmental harm.
- States should prohibit and eliminate hazardous labour practices where child workers are exposed to environmental risk factors, promote safer alternatives and ensure monitoring of children affected. States should ensure that children receive necessary treatment and compensation for any harm incurred. States should also protect the rights of parents to safe work, especially women and girls of reproductive age.

#### Ensuring a sustainable environment

- States should adopt and implement approaches and strategies, and establish legal frameworks for the protection of biodiversity, ecosystems services and natural resources that accord with international standards and plans and ensure the ability of current and future generations of children to exercise their rights to life, survival and development, to be heard, to health, food, water, participation in cultural life, an adequate standard of living, information and education. In particular, States should understand their obligations to respect and protect children's rights against global climate change. Such protection requires urgent and aggressive reductions in greenhouse gases, guided by the best available science.
- States should ensure that all children and their families and communities have equitable access to the benefits of natural resources and healthy environments, and ecosystems. States must do more to protect the rights of children from communities that have close material and cultural ties to their territories and are most vulnerable to environmental degradation.

#### Ensuring child-friendly play environments

- Municipal planning should place a priority on enabling access to environments which increase all children's freedom to play, be active and independent within their community. This can include creating zones with priority for pedestrians or cyclists over motorized traffic in roads of family housing or play streets outside schools; inclusive parks and playgrounds; access to landscaped green areas, open spaces, "wildlands" or nature; and overall greater "walkability". Furthermore, States should consider the need to orientate planning and regulations in areas that are not generally recognised as relevant for children towards ensuring the play- and child-friendliness of all environments.

#### Ensuring a connection with the natural world

- States should take steps to ensure through policies, strategies and actions in the area of environmental protection, urban planning, health, education etc. the ability of children to interact with nature as an underlying determinant of their rights to health and development, including the development of respect for the natural environment.

#### Environmental information and research

- States should recognize children's and their parents' right to know about environmental risks as central to the enjoyment of their human rights and freedoms,

and ensure the availability of and access to adequate and age-appropriate information on matters related to children's rights and the environment.

- States should strengthen efforts to research and monitor childhood exposure to environmental harm in all countries, and particularly for those in developing countries and high-risk situations. In this context, States should inter alia
  - ensure that all children are equally represented in monitoring and policy-relevant research, in particular vulnerable groups of children. It is recommended that States design inclusive programmes for actively involving children and parents in research and monitoring;
  - collect robust exposure data taking into account children's vulnerabilities and rights, and real-life conditions ('actual exposure');
  - undertake longitudinal studies that explore linkages between environmental harm and child rights impacts over time (e.g. disease that may set in later on in children's lives), and other studies of pregnant women, infants, and children that capture exposures at critical windows of development;
  - generate and collect information on underexplored issues such as the links between children's rights and biodiversity, ecosystems or access to nature;
  - promote the integration of information related to environmental and social determinants of children's health and development throughout time, while ensuring data protection.

#### Impact assessments

- States should take explicit account of children's rights in assessments of laws, policies, action plans (strategic environmental assessments) and projects (environmental impact assessments), which are likely to have an impact on the environment. This includes recognizing children as a stakeholder group, adequately considering their rights, risks and vulnerabilities and addressing actual and potential impacts.

#### Environmental education

- States have a duty to promote the development of respect for the natural environment as enshrined in Art.29(1)(e) of the CRC. To this end, States should elaborate specific policies that include the views and proposals of children with a view to promoting their rights and educating young citizens. Teachers' training programs should adequately reflect the implications of rights-based environmental education.
- States should work on meaningful implementation of Art. 29(1)(e) of the CRC at every education level from early on. In this respect, States should consider non-formal educational tools such as outdoor activities and field trips, and where relevant, include traditional knowledge. Curriculums should be frequently updated to be responsive to rapidly changing environments. States are encouraged to promote direct involvement of children in environmental protection as a crucial component of their learning process and an exercise in social practices that constitute civic participation.

- States should consider Art. 29(1)(e) of the CRC when implementing and reporting on SDG 4 (Target 7), SDG 13 (Target b) of the 2030 Agenda for Sustainable Development, Article 6 of the UNFCCC/Article 12 of the Paris Agreement (Action for Climate Empowerment) and educational measures under other MEAs (e.g. Aichi Biodiversity Target 1).
- States Parties should inform the Committee during their Periodic Reviews about what specific steps they take to give effect to Article 29(1)(e) of the CRC within their national education systems. In doing so States should specify how these measures raise children's awareness of their rights and responsibilities with regard to the environment, instil an environmental stewardship ethic, impart the skills children need to become environmental agents and promote equal opportunities for all students to become actively involved.

#### Freedom of expression and participation in environmental decision-making

- States should ensure that all children, including younger children, are given opportunities to participate in discussions on the impacts of environmental issues and should build children's meaningful participation into environmental policy-making at all levels.
- States should consider establishing specific child-friendly platforms for environmental participation and peer sharing and learning. For example, States should develop innovative mechanisms to allow children to be recognised as stakeholders with a right to be heard in decision making in the UNFCCC, CBD COPs etc., and to be involved in the design and delivery of projects related to climate change adaptation and mitigation, disaster risk reduction, or nature conservation.
- States should provide a safe and enabling environment for activists defending environmental rights, and owe a heightened duty of care to activists below the age of 18.

#### Access to justice in environmental matters

- States are encouraged to enshrine a justiciable right to a healthy environment and the principle of intergenerational equity in domestic law.
- States should ensure that children have access to justice and an effective remedy for violations due to environmental harm, including remediation of contaminated sites, preventative and precautionary measures, access to necessary medical and psychological care, and adequate compensation. In this context, States should rebalance the burden of proof and rules of evidence to remove barriers to bringing complaints of environmental harm involving children.
- States should establish collective and public interest action mechanisms, including for environmental cases, that can provide remedies to all children affected by large scale

environmental damage but do not require all affected children to be directly involved in proceedings.

- States should ensure NGOs and children have standing to file and intervene in legal proceedings in the interests of children affected by violations of their environmental rights and on behalf of future generations.
- States should support specialised and responsive justice sector professionals, civil society groups and legal mechanisms to provide legal representation to safeguard the rights and interests of children in relation to the environment. States should consider establishing environmental courts to facilitate better access to justice.
- States should enable access to effective judicial and nonjudicial mechanisms to provide remedies for children and their families whose rights have been violated by environmental impacts abroad, including private enterprises extraterritorially when there is a reasonable link between the State and the conduct concerned.
- States should mandate national human rights institutions and/or ombudspersons for children to receive complaints on environmental issues that interfere with children's rights.

#### International organizations

- International organizations working on environmental matters should mainstream children's rights in their policies and technical assistance throughout the UN system, including at UNEP, ILO, WHO, UNFCCC, HLPF and UNDP, and enhance cooperation and coordination among relevant actors.
- UNICEF is encouraged to build on its efforts to mainstream environmental considerations into its own programmes and activities, to assist States at the national, regional and international level to form appropriate policies that mainstream a child rights perspective into their environmental programmes and activities, to support and highlight good practices, and to submit information regarding the child rights impacts of environmental harm in its national reports to the Committee.

#### Committee on the Rights of the Child

- The Committee should provide robust guidance to State Parties to define the elements of a child-rights-based approach to environmental issues, and consider developing a General Comment on the relationship between children's rights and the environment. In doing so, the Committee should inter alia
  - Articulate the right of the child to a healthy and sustainable environment as implied in the Convention on the Rights of the Child, and recognize the importance of children's ability to connect with nature;
  - Clarify the extent of States' obligations relating to climate change and children's rights, including with regard to mitigation, adaptation, and the rights of children displaced as a result of climate change, taking into account the explicit reference to children's rights and intergenerational equity in the Paris Climate Agreement.

- Provide more specific guidance to States Parties on how to implement Art. 29(1)(e) of the CRC on the development of respect for the natural environment as an aim of education and entitlement;
  - Clarify the relationship between children's rights and the protection of ecosystems, biodiversity and management of and access to natural resources, and States' child rights obligations pertaining to policies on these matters;
  - Provide clear guidance on how to ensure prevention and monitoring of childhood exposure to toxics and pollution as well as diagnosis and treatment, effective regulation of the business sector, including in the full supply chain, and accountability for past violations;
  - Explain how children should be able to exercise their rights of information, participation, and remedy to protect against environmental harm.
- The Committee should consider initiating a study on the impacts of toxics and pollution on the rights of the child, recognizing States' obligation to prevent exposure to such hazardous substances and wastes, and building on its general comment No. 16.
  - The Committee should examine the role of impact assessments as a tool to strengthen children's rights in the context of the environment and share good practices in this respect.
  - The Committee should systematically call for governments to implement child-focused environmental protection measures during dialogues with States Parties, and include a specific section on children's rights and the environment in the Concluding Observations.
  - The Committee should recommend to States Parties that research is undertaken into the daily lives of children and their caregivers and the impact of housing and neighbourhood conditions in order to understand how they use local environments, with consideration to Article 31 of the CRC.
  - The Committee should share with States Parties more good practices on how to integrate children's rights in law, policy and action related to the environment. For example, the Committee should share lessons learned on best practices in realising Article 12 of the CRC in context of environmental protection.
  - The Committee should consistently link Concluding Observations on environmental issues to the SDGs and States' commitments under the UNFCCC, the Minamata Convention and other international agreements for chemicals and wastes, the Sendai Framework for Disaster Risk Reduction 2015–2030, and the Convention on Biodiversity, in order to anchor these frameworks in States' CRC obligations and reporting. The Committee should strengthen the coherence between the CRC and these global frameworks to raise States' awareness and capacity to monitor, act and report on the impacts and measures required to fulfil children's rights in the context of environmental protection, as well as on progress made.
  - The Committee should supervise relevant legal decisions related to children's rights and the environment. Furthermore, the Committee should encourage investigations by human rights bodies and mandate holders, such as UN human rights mechanisms, special procedures of the Human Rights Council and NHRIs, into children's rights

violations in the context of environmental harm. The Committee should also promote the use of available international complaint mechanisms to ensure child victims of environmental harm have access to effective remedies.

- The Committee should reach out to the UNEP, UNFCCC, UNDP and WHO amongst others, and offer its assistance to ensure better integration of children's rights and the environment, and seek their input on environmental concerns in its own actions. The Committee should provide input to debates and negotiations on environmental and sustainable development issues at the international level, including through written submissions to relevant bodies and technical briefings for the countries participating in these processes.
- The Committee should raise public awareness of the relationship between children's rights and the environment, including by addressing the impacts of large-scale disasters and the responsibility of the business sector.

#### Civil Society Organizations

- Civil society, including NGOs, researchers and academic institutions, should gather and disseminate evidence to promote a better understanding and protection of children's rights in the environmental context, including compelling case studies, and raise public awareness about children's environmental rights. Furthermore, CSOs are encouraged to assist in collecting information regarding gaps in legal and policy frameworks, as well as examples of best practice regarding child rights and the environment.
- Civil society should submit more information to the Committee and other human rights mechanisms regarding the child rights impacts of environmental harm, and include children's views on these matters.
- Civil society should increase collaboration to strengthen recognition of the children's rights dimension of environmental issues within the human rights, environmental, public health, urban planning, business and other relevant communities. Good examples of cooperation between relevant actors working on children's rights and the environment should be shared to inspire learning processes.
- Children's rights organisations are encouraged to integrate environmental issues in their policies, programmes and activities, including participation in negotiations on future environmental agreements, laws and policies. Environmental organisations should take adequate account of children's rights in their work.

## 7. Conclusion

The Committee appreciates the valuable inputs provided by all participants of its 2016 Day of General Discussion, whether by taking part in the discussions during the meeting or providing written submissions for the DGD. The Day was a real success in terms of bringing the often separate discourses on children's rights and the environment together. The Committee was delighted to hear about all the inspiring and promising initiatives already undertaken with a

view to strengthening children's rights in the face of current environmental crises, including by children themselves. The Committee was impressed by the knowledge, commitment and passion of the children present. Children, who are the future generation, are already here today, and their rights ought to be looked after today.

In its future work on the topic, the Committee will strive to heed the spirit of the 2016 DGD. It will consider adequate steps to provide more robust guidance on children's rights in the environmental context, including in due course the drafting of a General Comment. At the same time, the Committee wishes to emphasize that the international law on children's rights sets out fairly clear obligations requiring States and other relevant actors, including the business sector, to take steps to protect children from environmental harm, including through preventive and precautionary measures. When governments fail to protect children from environmental risk factors, this constitutes a violation of children's rights.

The success of the DGD will have to prove itself on the ground by how it influences the lived reality of children to the better. The debates among experts are important, but what happens "outside the room" matters most. For this purpose, it is critical to build momentum and partnerships. The DGD was the beginning of a conversation and the Committee hopes that all stakeholders will stay connected and join efforts to form a global movement for children's rights and the environment.

#### **ANNEX- List of DGD speakers**

The day began in full plenary. Benyam Dawit Mezmur, Chair of the Committee on the Rights of the Child provided the opening remarks. Introductory statements were delivered by experts and representatives from supporting organizations:

- *Dr. Maria Neira, Director of the Department of Public Health, Environmental and Social Determinants of Health at the World Health Organization;*
- *H.E. Cecilia Rebong, Ambassador and Permanent Representative of the Philippines to the United Nations Office at Geneva;*
- *Ms. Ritu, Caleb Mulenga and Gina Maria Parra Chiquillo as child representatives;*
- *Ignacio Packer, Secretary-General of Terre des Hommes International Federation;*
- *John Knox, United Nations Special Rapporteur on Human Rights and the Environment.*

Following the opening plenary, the 2016 DGD discussions proceeded along two main lines in corresponding Working Groups. The first Working Group examined the role of children's rights in addressing the impact of environmental exposure. Speakers included:

- *Mr. Baskut Tuncak, UN Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*
- *Dr. Lilian Corra, International Society of Doctors for the Environment*
- *Ms. Juliane Kippenberg, Human Rights Watch*
- *Ms Ritu, Child Representative, and Ms. Sharmila Bhagat, Ankur Society for Alternatives in Education*
- *Mr. Nicolas Rees, UNICEF*
- *Mr. Caleb Mulenga, Child Representative, and Mr Namu Chuma, Environment Africa*

- *Dr. Daniel Limpitlaw, Mining Consultant*

The second Working Group examined the role of children's rights in addressing climate change (morning) and the degradation of the environment through depletion of resources, the destruction of ecosystems, and loss of biodiversity (afternoon). Speakers included:

- *Ms. Joni Pegram, UNICEF UK*
- *Ms. Brianna Fruean, Climate Youth Activist*
- *Ms. Rekha Dhillon-Richardson, Climate Youth Activist and Ms. Kelly Matheson, Our Children's Trust*
- *Ms. Priscila Bribiesca-Rodríguez, Earth Defenders*
- *Mr. Tom Weerachat, Mekong Youth Assembly*
- *Ms. Gina Marcela Parra Chiquillo, Child Representative, and Ms. Maria Andrea Gomez Gomez, Pensamiento Y Acción Social*

In the closing session, the two Working Groups' conclusions were presented to the plenary by Committee on the Rights of the Child Members Olga Khazova, Gehad Madi and Clarence Nelson. Kirsten Sandberg, Vice-Chair of the Committee on the Rights of the Child and Chair of the Committee's Working Group on Children's Rights and the Environment, delivered concluding remarks.

This is Exhibit "D" referred to in the Affidavit of  
Katherina Vandergift, sworn before me at

Ottawa this  
<sup>29th</sup> 28 day of November, 2018

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A Commissioner for taking Affidavits within

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## Convention on the Rights of the Child

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### Committee on the Rights of the Child

#### **Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012)**

1. The Committee considered the combined third and fourth periodic report of Canada (CRC/C/CAN/3-4) at its 1742nd and 1743rd meetings (see CRC/C/SR. 1742 and 1743) held on 26 and 27 September 2012, and adopted, at its 1754th meeting (see CRC/C/SR.1754), held on 5 October 2012, the following concluding observations.

#### **I. Introduction**

2. The Committee welcomes the submission of the consolidated third and fourth periodic report of the State party (CRC/C/CAN/3-4) and the written replies to its list of issues (CRC/C/CAN/Q/3-4/Add.1), which allowed for a better understanding of the situation in the State party. The Committee expresses appreciation for the constructive dialogue held with the multi-sectorial delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with its concluding observations adopted on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/CAN/CO/1, 2006) and under the Optional Protocol on sale of children, child prostitution and child pornography (CRC/CO/OPSC/CAN/CO/1, 2012). The Committee regrets that the reporting guidelines were not followed in the preparation of the State party's report.

#### **II. Follow-up measures undertaken and progress achieved by the State party**

4. The Committee welcomes the adoption of the following legislative measures:

(a) The law amending the Citizenship Act which came into effect on 17 April 2009;

(b) Bill C-49 in 2005, an Act to amend the Criminal Code (trafficking in persons) (25 Nov. 2005), which creates indictable offences which specifically address trafficking in persons.

5. The Committee also welcomes the ratification of the Convention on the Rights of Persons with Disabilities, in March 2010.

6. The Committee notes as positive the following institutional and policy measures:
- (a) National Action Plan to Combat Human Trafficking, in June 2012;
  - (b) Homelessness Partnering Strategy (HPS), in April 2007;
  - (c) National Plan of Action for children, A Canada Fit for Children, launched in April 2004;
  - (d) National Strategy to Protect Children from Sexual Exploitation on the Internet, launched in May 2004.

### III. Main areas of concern and recommendations

#### A. General measures of implementation (arts. 4, 42 and 44, para. 6 of the Convention)

##### The Committee's previous recommendations

7. While welcoming the State party's efforts to implement the Committee's concluding observations of 2003 on the State party's initial report (CRC/C/15/Add.215, 2003), the Committee notes with regret that some of the recommendations contained therein have not been fully addressed.

8. **The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations on the second periodic report under the Convention that have not been implemented or sufficiently implemented, particularly those related to reservations, legislation, coordination, data collection, independent monitoring, non-discrimination, corporal punishment, family environment, adoption, economic exploitation, and administration of juvenile justice.**

##### Reservations

9. **While the Committee positively acknowledges the State party's efforts towards removing its reservations to article 37(c) of the Convention, the Committee strongly reiterates its previous recommendation (CRC/C/15/Add.215, para.7, 2003), for the prompt withdrawal of its reservation to article 37(c).**

##### Legislation

10. While welcoming numerous legislative actions related to the implementation of the Convention, the Committee remains concerned at the absence of legislation that comprehensively covers the full scope of the Convention in national law. In this context, the Committee further notes that given the State party's federal system and dualist legal system, the absence of such overall national legislation has resulted in fragmentation and inconsistencies in the implementation of child rights across the State party, with children in similar situations being subject to disparities in the fulfilment of their rights depending on the province or territory in which they reside.

11. **The Committee recommends that the State party find the appropriate constitutional path that will allow it to have in the whole territory of the State party, including its provinces and territories, a comprehensive legal framework which fully incorporates the provisions of the Convention and its Optional Protocols and provides clear guidelines for their consistent application.**

### Comprehensive policy and strategies

12. The Committee notes the adoption of the National Plan of Action for Children, A Canada Fit for Children, in 2004, but is concerned that beyond its broad objectives the Plan lacks clear division of responsibilities, clear priorities, targets and timetables, resource allocation and systematic monitoring as recommended in the Committee's previous concluding observations (CRC/C/15/Add.215, para. 13, 2003) and that it has not been evaluated in order to assess its impact and to guide the next steps.

13. **The Committee strongly recommends that the State party adopt a national strategy that provides a comprehensive implementation framework for the federal, provincial and territorial levels of government spelling out as is appropriate the priorities, targets and respective responsibilities for the overall realization of the Convention and that will enable the provinces and territories to adopt accordingly their own specific plans and strategies. The Committee further recommends that the State party allocate adequate human, technical and financial resources for the implementation, monitoring and evaluation of this comprehensive strategy and related provincial and territorial plans. In this context, the Committee encourages the State party to establish a coordinated monitoring mechanism that would enable the submission and review of progress reports by all provinces and territories. It also recommends that children and civil society be consulted.**

### Coordination

14. While noting as positive the work of the Council of Ministers of Education and the Joint Consortium for School Health, both with representation from all levels of government, as well as other sectorial coordination bodies, the Committee remains concerned that overall coordination of the implementation of the Convention assigned to the Interdepartmental Working Group on Children's Rights (2007) has not been effective in practice. Furthermore, the Committee notes the challenges presented by the federal system of the State party and is concerned that the absence of overall coordination results in significant disparities in the implementation of the Convention across the State party's provinces and territories.

15. **The Committee strongly reiterates its recommendation that the State party establish a coordinating body for the implementation of the Convention and the national strategy (recommended in paragraph 13 above) with the stature and authority as well as the human, technical and financial resources to effectively coordinate actions for children's rights across sectors and among all provinces and territories. Furthermore, the Committee encourages the State party to consider strengthening the Interdepartmental Working Group on Children's Rights accordingly, thus ensuring coordination, consistency and equitability in overall implementation of the Convention. The Committee also recommends that civil society, including all minority groups, and children be invited to form part of the coordination body.**

### Allocation of resources

16. Bearing in mind that the State party is one of the most affluent economies of the world and that it invests sizeable amounts of resources in child-related programmes, the Committee notes that the State party does not use a child-specific approach for budget planning and allocation in the national and provinces/territories level budgets, thus making it practically impossible to identify, monitor, report and evaluate the impact of investments in children and the overall application of the Convention in budgetary terms. Furthermore, the Committee also notes that while the State party's report contained information about

various programmes and their overall budget, it regrets that the report lacked information on the impact of such investments.

17. **In light of its day of general discussion in 2007 on “Resources for the Rights of the Child - Responsibility of States” and with emphasis on articles 2, 3, 4 and 6 of the Convention, the Committee recommends that the State party establish a budgeting process which adequately takes into account children’s needs at the national, provincial and territorial levels, with clear allocations to children in the relevant sectors and agencies, specific indicators and a tracking system. In addition, the Committee recommends that the State party establish mechanisms to monitor and evaluate the efficacy, adequacy and equitability of the distribution of resources allocated to the implementation of the Convention. Furthermore, the Committee recommends that the State party define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures (for example, children of Aboriginal, African Canadian, or other minorities and children with disabilities) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies.**

#### **International cooperation**

18. The Committee welcomes the international cooperation carried out through the Canada International Development Assistance (CIDA) programme and particularly appreciates that approximately 30 per cent of the State party’s aid goes to health, education, and population. However, the Committee notes with concern that ODA for 2010-2011 is 0.33 per cent of GNI and is projected to decline, which would bring it even further below the OECD/DAC average and below the percentage recommended in the Monterrey Consensus.

19. **The Committee encourages the State party to focus on children in its assistance programmes and to increase its level of funding in order to meet the recommended aid target of 0.7 per cent of GNI.**

#### **Data collection**

20. The Committee notes with concern the limited progress made to establish a national, comprehensive data collection system covering all areas of the Convention. The Committee notes that the complex data collection systems utilize different definitions, concepts, approaches, and structures across provinces and territories, which therefore makes it difficult to assess progress to strengthen the implementation of the Convention. In particular, the Committee notes that the State party report lacked data on the number of children aged 14 to 18 years old placed into alternative care facilities.

21. **The Committee reiterates its recommendation that the State party set up a national and comprehensive data collection system and to analyse the data collected as a basis for consistently assessing progress achieved in the realization of child rights and to help design policies and programmes to strengthen the implementation of the Convention. Data should be disaggregated by age, sex, geographic location, ethnicity and socio-economic background to facilitate analysis on the situation of all children. More specifically, the Committee recommends that appropriate data on children in special situations of vulnerability be collected and analysed to inform policy decisions and programmes at different levels.**

#### **Independent monitoring**

22. While noting that most Canadian provinces have an Ombudsman for Children, the Committee reiterates its concern (CRC/C/15/Add.215, para. 14, 2003) about the absence of

an independent Ombudsman for Children at the federal level. Furthermore, the Committee is concerned that their mandates are limited and that not all children may be aware of the complaints procedure. While noting that the Canadian Human Rights Commission operates at the federal level and has the mandate to receive complaints, the Committee regrets that the Commission only hears complaints based on discrimination and therefore does not afford all children the possibility to pursue meaningful remedies for breaches of all rights under the Convention.

23. **The Committee recommends that the State party take the necessary measures to establish a federal Children's Ombudsman in full accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), to ensure comprehensive and systematic monitoring of all children's rights at the federal level. Furthermore, the Committee encourages the State party to raise awareness among children concerning the existing children's Ombudsman in their respective provinces and territories. Drawing attention to its general comment No. 2 (2002), the Committee also calls upon the State party to ensure that this national mechanism is provided with the necessary human, technical and financial resources in order to secure its independence and efficacy.**

#### **Dissemination and awareness-raising**

24. The Committee appreciates the State party's efforts to promote awareness and understanding of the Convention, particularly by supporting non-governmental organizations' efforts. Nevertheless, the Committee is concerned that awareness and knowledge of the Convention remains limited amongst children, professionals working with children, parents, and the general public. The Committee is especially concerned that there has been little effort to systematically disseminate information on the Convention and integrate child rights education into the school system.

25. **The Committee urges the State party to take more active measures to systematically disseminate and promote the Convention, raising awareness among the public at large, among professionals working with or for children, and among children. In particular, the Committee urges the State party to expand the development and use of curriculum resources on children's rights, especially through the State party's extensive availability of free Internet and web access providers, as well as education initiatives that integrate knowledge and exercise of children's rights into curricula, policies, and practices in schools.**

#### **Training**

26. Despite information regarding some training on the Convention provided for professionals, such as immigration officers and government lawyers, the Committee is concerned that there is no systematic training on children's rights and the Convention for all professional groups working for or with children. In particular, the Committee is concerned that personnel involved in juvenile justice, such as law enforcement officers, prosecutors, judges, and lawyers, lack understanding and training on the Convention.

27. **The Committee urges the State party to develop an integrated strategy for training on children's rights for all professionals, including, government officials, judicial authorities, and professionals who work with children in health and social services. In developing such training programmes, the Committee urges the State party to focus the training on the use of the Convention in legislation and public policy, programme development, advocacy, and decision making processes and accountability.**

### **Child rights and the business sector**

28. The Committee joins the concern expressed by the Committee on the Elimination of Racial Discrimination that the State party has not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples in territories outside Canada, (CERD/C/CAN/CO/19-20, para. 14), in particular gas, oil, and mining companies. The Committee is particularly concerned that the State party lacks a regulatory framework to hold all companies and corporations from the State party accountable for human rights and environmental abuses committed abroad.

29. **The Committee recommends that the State party establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environment and other standards, particularly with regard to child rights, and in light of Human Rights Council resolutions 8/7 of 18 June 2008 (para. 4(d)) and resolution 17/4 of 16 June 2011 (para. 6(f)). In particular, it recommends that the State party ensure:**

(a) **The establishment of a clear regulatory framework for, inter alia, the gas, mining, and oil companies operating in territories outside Canada to ensure that their activities do not impact on human rights or endanger environment and other standards, especially those related to children's rights;**

(b) **The monitoring of implementation by companies at home and abroad of international and national environmental and health and human rights standards and that appropriate sanctions and remedies are provided when violations occur with a particular focus on the impact on children;**

(c) **Assessments of, and consultations with companies on their plans to address environmental and health pollution and the human rights impact of their activities and their disclosure to the public;**

(d) **In doing so, take into account the United Nations Business and Human Rights Framework adopted unanimously in 2008 by the Human Rights Council.**

## **B. Definition of the child (art. 1 of the Convention)**

30. The Committee is concerned that not all children under the age of 18 are benefiting from the full protection under the Convention, in particular children who in some provinces and territories, can be tried as adults, and children between the ages of 16 and 18 who are not appropriately protected against sexual exploitation in some provinces and territories.

31. **The Committee urges the State party to ensure the full compliance of all national provisions on the definition of the child with article 1 of the Convention, in particular to ensure that all children under 18 cannot be tried as adults and all children under 18 who are victims of sexual exploitation receive appropriate protection.**

## **C. General principles (arts. 2, 3, 6 and 12 of the Convention)**

### **Non-discrimination**

32. While welcoming the State party's efforts to address discrimination and promote intercultural understanding, such as the Stop Racism national video contest, the Committee is nevertheless concerned at the continued prevalence of discrimination on the basis of

ethnicity, gender, socio-economic background, national origin and other grounds. In particular, the Committee is concerned at:

(a) The significant overrepresentation of Aboriginal and African-Canadian children in the criminal justice system and out-of-home care;

(b) The serious and widespread discrimination in terms of access to basic services faced by children in vulnerable situations, including minority children, immigrants, and children with disabilities;

(c) The lack of a gender perspective in the development and implementation of programmes aimed at improving the situation for marginalized and disadvantaged communities, such as programmes to combat poverty or the incidence of violence, especially in light of the fact that girls in vulnerable situations are disproportionately affected;

(d) The lack of action following the Auditor General's finding that child welfare services for Aboriginal children are provided with less financial resources than those for non-Aboriginal children;

(e) Economic discrimination directly or indirectly resulting from social transfer schemes and other social/tax benefits, such as the authorization given to provinces and territories to deduct the amount of the child benefit under the National Child Benefit Scheme from the amount of social assistance received by parents on welfare.

**33. The Committee recommends that the State party include information in its next periodic report on measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party in follow-up to the Declaration and Program of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference. The Committee also recommends that the State party:**

**(a) Take urgent measures to address the overrepresentation of Aboriginal and African-Canadian children in the criminal justice system and out-of-home care;**

**(b) Address disparities in access to services by all children facing situations of vulnerability, including ethnic minorities, children with disabilities, immigrants and others;**

**(c) Ensure the incorporation of a gender perspective in the development and implementation of any programme or stimulus package, especially programmes related to combatting violence, poverty, and redressing other vulnerabilities;**

**(d) Take immediate steps to ensure that in law and practice, Aboriginal children have full access to all government services and receive resources without discrimination;**

**(e) Undertake a detailed assessment of the direct or indirect impact of the reduction of social transfer schemes and other social/tax benefit schemes on the standard of living of people depending on social welfare, including the reduction of social welfare benefits linked to the National Child Benefit Scheme, with particular attention to women, children, older persons, persons with disabilities, Aboriginal people, African Canadians and members of other minorities.**

#### **Best interests of the child**

34. The Committee is concerned that the principle of the best interests of the child is not widely known, appropriately integrated and consistently applied in all legislative,

administrative and judicial proceedings and in policies, programmes and projects relevant to and with an impact on children. In particular, the Committee is concerned that the best interest of the child is not appropriately applied in asylum-seeking, refugee and/or immigration detention situations.

35. **The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate them to the public or private social welfare institutions, courts of law, administrative authorities and legislative bodies. The legal reasoning of all judicial and administrative judgements and decisions should also be based on this principle, specifying the criteria used in the individual assessment of the best interests of the child.**

#### **Respect for the views of the child**

36. The Committee welcomes the State party's Yukon Supreme Court decision in 2010 which ruled that all children have the right to be heard in custody cases. Nevertheless, the Committee is concerned that there are inadequate mechanisms for facilitating meaningful and empowered child participation in legal, policy, environmental issues, and administrative processes that impact children.

37. **The Committee draws the State party's attention to its general comment No. 12 (2009), and recommends that it continue to ensure the implementation of the right of the child to be heard in accordance with article 12 of the Convention. In doing so, it recommends that the State party promote the meaningful and empowered participation of all children, within the family, community, and schools, and develop and share good practices. Specifically, the Committee recommends that the views of the child be a requirement for all official decision-making processes that relate to children, including custody cases, child welfare decisions, criminal justice, immigration, and the environment. The Committee also urges the State party to ensure that children have the possibility to voice their complaints if their right to be heard is violated with regard to judicial and administrative proceedings, and that children have access to an appeals procedure.**

### **D. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a) of the Convention)**

#### **Birth registration**

38. While the Committee notes as positive that birth registration is almost universal in the State party, it is seriously concerned that some children have been deprived of their identity due to the illegal removal of the father's name on original birth certificates by governmental authorities, especially in cases of unwed parents.

39. **The Committee recommends that the State party review legislation and practices in the provinces and territories where birth registrations have been illegally altered or the names of parents have been removed. The Committee urges the State party to ensure that the names on such birth certificates are restored and change legislation if necessary to achieve this.**

### Nationality and citizenship

40. While welcoming the positive aspects of the April 2009 amendment to the Citizenship Act, the Committee is nevertheless concerned about some provisions of the amendment which place significant limitations on acquiring Canadian citizenship for children born to Canadian parents abroad. The Committee is concerned that such restrictions, can in some circumstances, lead to statelessness. Furthermore, the Committee is concerned that children born abroad to government officials or military personnel are exempted from such limitations on acquiring Canadian citizenship.

**41. The Committee recommends that the State party review the provisions of the amendment to the Citizenship Act that are not in line with the Convention with a view to removing restrictions on acquiring Canadian citizenship for children born abroad to Canadian parents. The Committee also urges the State party to consider ratifying the 1954 Convention relating to the Status of Stateless Persons.**

### Preservation of identity

42. The Committee is concerned that vulnerable children, including Aboriginal and African Canadian children, who are greatly over-represented in the child welfare system often lose their connections to their families, community, and culture due to lack of education on their culture and heritage. The Committee is also concerned that under federal legislation, Aboriginal men are legally entitled to pass their Aboriginal status to two generations while Aboriginal women do not have the right to pass their Aboriginal status to their grandchildren.

**43. The Committee urges the State party to ensure full respect for the preservation of identity for all children, and to take effective measures so as to ensure that Aboriginal children in the child welfare system are able to preserve their identity. To this end, the Committee urges the State party to adopt legislative and administrative measures to account for the rights, such as name, culture and language, of children belonging to minority and indigenous populations and ensure that the large number of children in the child welfare system receive an education on their cultural background and do not lose their identity. The Committee also recommends that the State party revise its legislation to ensure that women and men are equally legally entitled to pass their Aboriginal status to their grandchildren.**

## **E. Violence against children ((arts 19, 37 (a), 34 and 39 of the Convention)**

### Corporal punishment

44. The Committee is gravely concerned that corporal punishment is condoned by law in the State party under Section 43 of the Criminal Code. Furthermore, the Committee notes with regret that the 2004 Supreme Court decision *Canadian Foundation for Children, Youth and the Law v. Canada*, while stipulating that corporal punishment is only justified in cases of "minor corrective force of a transitory and trifling nature," upheld the law. Furthermore, the Committee is concerned that the legalization of corporal punishment can lead to other forms of violence.

**45. The Committee urges the State party to repeal Section 43 of the Criminal Code to remove existing authorization of the use of "reasonable force" in disciplining children and explicitly prohibit all forms of violence against all age groups of children, however light, within the family, in schools and in other institutions where children may be placed. Additionally, the Committee recommends that the State party:**

**(a) Strengthen and expand awareness-raising for parents, the public, children, and professionals on alternative forms of discipline and promote respect for children's rights, with the involvement of children, while raising awareness about the adverse consequences of corporal punishment;**

**(b) Ensure the training of all professionals working with children, including judges, law enforcement, health, social and child welfare, and education professionals to promptly identify, address and report all cases of violence against children.**

#### **Abuse and neglect**

46. While the Committee notes initiatives such as *the Family Violence Prevention Program*, the Committee is concerned about the high levels of violence and maltreatment against children evidenced by the *Canadian Incidence Study of Reported Child Abuse and Neglect 2008*. The Committee is especially concerned about:

**(a) The lack of a national comprehensive strategy to prevent violence against all children;**

**(b) The fact that women and girls in vulnerable situations are particularly affected, including Aboriginal, African Canadian, and those with disabilities;**

**(c) The low number of interventions in cases of family violence, including restraining orders;**

**(d) The lack of counselling for child victims and perpetrators and inadequate programmes for the reintegration of child victims of domestic violence.**

47. **The Committee recommends that the State party take into account the Committee's general comment No. 13 (2011) and urges the State party to:**

**(a) Develop and implement a national strategy for the prevention of all forms of violence against all children, and allocate the necessary resources to this strategy and ensure that there is a monitoring mechanism;**

**(b) Ensure that the factors contributing to the high levels of violence among Aboriginal women and girls are well understood and addressed in national and provincial/territorial plans;**

**(c) Ensure that all child victims of violence have immediate means of redress and protection, including protection or restraining orders;**

**(d) Establish mechanisms for ensuring effective follow-up support for all child victims of domestic violence upon their family reintegration.**

#### **Sexual exploitation and abuse**

48. The Committee notes with appreciation the launching of the National Strategy for the Protection of Children from Sexual Exploitation on the Internet in 2004 and the significant amount of resources allocated to the implementation of this programme by the State party. The Committee further notes as positive that the State party has demonstrated considerable political will to coordinate law enforcement agencies to combat sexual exploitation of children on the Internet. Nevertheless, the Committee is concerned that the State party has not taken sufficient action to address other forms of sexual exploitation, such as child prostitution and child sexual abuse. The Committee is also concerned about the lack of attention to prevention of child sexual exploitation and the low number of investigations and prosecutions for sexual exploitation of children as well as at the inadequate sentencing for those convicted. In particular, the Committee is gravely concerned about cases of Aboriginal girls who were victims of child prostitution and have

gone missing or were murdered and have not been fully investigated with the perpetrators going unpunished.

49. **The Committee urges the State party to:**

(a) **Expand existing government strategies and programmes to include all forms of sexual exploitation;**

(b) **Establish a plan of action to coordinate and strengthen law enforcement investigation practices on cases of child prostitution and to vigorously ensure that all cases of missing girls are investigated and prosecuted to the full extent of the law;**

(c) **Impose sentencing requirements for those convicted of crimes under the Optional Protocol on the sale of children, child prostitution and child pornography to ensure that the punishment is commensurate with the crime;**

(d) **Establish programmes for those convicted of sexual exploitation abuse, including rehabilitation programmes and federal monitoring systems to track former perpetrators.**

#### **Harmful practices**

50. The Committee is concerned that there is inadequate protection against forced child marriages, especially among immigrant communities and certain religious communities such as the polygamous communities in Bountiful, British Columbia.

51. **The Committee recommends that the State party take all necessary measures, including legislative measures and targeted improvement of investigations and law enforcement, to protect all children from underage forced marriages and to enforce the legal prohibition against polygamy.**

#### **Freedom of the child from all forms of violence**

52. **Recalling the recommendations of the United Nations Study on violence against children (A/61/299), the Committee recommends that the State party prioritize the elimination of all forms of violence against children. The Committee further recommends that the State party take into account its general comment No 13 (2011), and in particular:**

(a) **Develop a comprehensive national strategy to prevent and address all forms of violence against children;**

(b) **Adopt a national coordinating framework to address all forms of violence against children;**

(c) **Pay particular attention to the gender dimension of violence;**

(d) **Cooperate with the Special Representative of the Secretary-General on violence against children and relevant United Nations institutions.**

### **F. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)**

#### **Family environment**

53. The Committee welcomes the State party's efforts to better support families through, inter alia, legislative and institutional changes. However, the Committee is concerned that families in some disadvantaged communities lack adequate assistance in the performance of their child-rearing responsibilities, notably those families in a crisis situation due to

poverty. In particular, the Committee is concerned about the number of pregnant girls and teenage mothers who drop out of school, which leads to poorer outcomes for their children.

54. **The Committee recommends that the State party intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities with timely responses at the local level, including services to parents who need counselling in child-rearing, and, in the case of Aboriginal and African Canadian populations, culturally appropriate services to enable them to fulfil their parental role. The Committee further encourages the State party to provide education opportunities for pregnant girls and teenage mothers so that they can complete their education.**

#### **Children deprived of a family environment**

55. The Committee is deeply concerned at the high number of children in alternative care and at the frequent removal of children from their families as a first resort in cases of neglect or financial hardship or disability. The Committee is also seriously concerned about inadequacies and abuses committed within the alternative care system of the State party, including:

- (a) Inappropriate placements of children because of poorly researched and ill-defined reasons for placement;
- (b) Poorer outcomes for young people in care than for the general population in terms of health, education, well-being and development;
- (c) Abuse and neglect of children in care;
- (d) Inadequate preparation provided to children leaving care when they turn 18;
- (e) Inadequate screening, training, support and assessment of care givers;
- (f) Aboriginal and African Canadian children often placed outside their communities.

56. **The Committee urges the State party to take immediate preventive measures to avoid the separation of children from their family environment by providing appropriate assistance and support services to parents and legal guardians in performance of child-rearing responsibilities, including through education, counselling and community-based programmes for parents, and reduce the number of children living in institutions. Furthermore, the Committee calls upon the State party to:**

- (a) **Ensure that the need for placement of each child in institutional care is always assessed by competent, multidisciplinary teams of professionals and that the initial decision of placement is done for the shortest period of time and subject to judicial review by a civil court, and is further reviewed in accordance with the Convention;**
- (b) **Develop criteria for the selection, training and support of childcare workers and out-of-home carers and ensure their regular evaluation;**
- (c) **Ensure equal access to health care and education for children in care;**
- (d) **Establish accessible and effective child-friendly mechanisms for reporting cases of neglect and abuse and commensurate sanctions for perpetrators;**
- (e) **Adequately prepare and support young people prior to their leaving care by providing for their early involvement in the planning of transition as well as by making assistance available to them following their departure;**

(f) **Intensify cooperation with all minority community leaders and communities to find suitable solutions for children from these communities in need of alternative care, such as for example, kinship care.**

#### **Adoption**

57. The Committee notes as positive the recent court decision in *Ontario v. Marchland* which ruled that children have the right to know the identity of both biological parents. However, the Committee is concerned that domestic adoption legislation, policy, and practice are set by each of the provinces and territories and vary considerably from jurisdiction to jurisdiction and as a result, Canada has no national adoption legislation, national standards, national database on children in care or adoption, and little known research on adoption outcomes. The Committee is also concerned that adoption disclosure legislation has not been amended to ensure that birth information is made available to adoptees as recommended in previous concluding observations (CRC/C/25/Add.215, para. 31). The Committee also regrets the lack of information provided in the State party on intercountry adoption.

58. **The Committee recommends that the State party:**

(a) **Adopt legislation, including at the federal, provincial and territorial levels, where necessary, to ensure compliance with the Convention and the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption;**

(b) **Amend its legislation without delay to ensure that information about the date and place of birth of adopted children and their biological parents are preserved;**

(c) **Provide detailed information and disaggregated data on domestic and international adoptions in its next periodic report.**

### **G. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)**

#### **Children with disabilities**

59. The Committee welcomes the ratification of the Convention on the Rights of Persons with Disabilities in 2010. While recognizing that progress has been made on the inclusion of children with disabilities within the State party, the Committee is deeply concerned that:

(a) The *PALS (Participation and Activity Limitation Survey)* was last conducted by the State party in 2006 without it having been substituted to date by any other data collection effort on children with disabilities. As a result, there are no global or disaggregated data since 2006 on which to base a policy on inclusion and equal access for children with disabilities;

(b) There is great disparity among the different provinces and territories of the State party in access to inclusive education, with education in several provinces and territories being mostly in segregated schools;

(c) The cost of caring for children with disabilities often has a negative economic impact on household incomes and parental employment and some children do not have access to the necessary support and services;

(d) Children with disabilities are more than twice as vulnerable to violence and abuse as other children and despite an overall drop in homicide rates among the general

population, there appears to be an increase in homicide and filicide rates against people with disabilities.

60. **The Committee recommends that the State party implement the provisions of the Convention on the Rights of Persons with Disabilities and in light of its general comment No. 9 (2006), the Committee urges the State party to:**

(a) **Establish as soon as possible a system of global and disaggregated data collection on children with disabilities, which will enable the State party and all its provinces and territories to establish inclusive policies and equal opportunities for all children with disabilities;**

(b) **Ensure that all children with disabilities have access, in all provinces and territories, to inclusive education and are not forced to attend segregated schools only designed for children with disabilities;**

(c) **Ensure that children with disabilities, and their families, are provided with all necessary support and services in order to ensure that financial constraints are not an obstacle in accessing services and that household incomes and parental employment are not negatively affected;**

(d) **Take all the necessary measures to protect children with disabilities from all forms of violence.**

#### **Breastfeeding**

61. While welcoming programmes such as *Canada's Prenatal Nutrition Program (CPNP)*, the Committee is nevertheless concerned at the low rates of breastfeeding in the State party, especially among women in disadvantaged situations and the lack of corresponding programmes to help encourage breastfeeding among all mothers in the State party. The Committee also regrets that despite adopting the International Code of Marketing of Breastmilk Substitutes, the State party has not integrated the various articles of the International Code into its regulatory framework and as a result, formula companies have routinely violated the Code and related World Health Assembly resolutions with impunity.

62. **The Committee recommends that the State party:**

(a) **Establish a programme to promote and enable all mothers to successfully breastfeed exclusively for the first six months of the infant's life and sustain breastfeeding for two years or more as recommended by the Global Strategy for Infant and Young Child Feeding;**

(b) **Strengthen the promotion of breastfeeding and enforce the International Code of Marketing of Breast-milk Substitutes, and undertake appropriate action to investigate and sanction violations.**

#### **Health**

63. The Committee notes as positive the free and widespread access to high-quality health care within the State party. However, the Committee notes with concern the high incidence of obesity among children in the State party and is concerned at the lack of regulations on the production and marketing of fast foods and other unhealthy foods, especially as targeted at children.

64. **The Committee recommends that the State party address the incidence of obesity in children, by inter alia promoting a healthy lifestyle among children, including physical activity and ensuring greater regulatory controls over the**

**production and advertisement of fast food and unhealthy foods, especially those targeted at children.**

#### **Mental health**

65. The Committee notes with appreciation that the State party provided significant resources to implement the National Aboriginal Youth Suicide Prevention Strategy over a five-year period. Despite such programmes, the Committee is concerned about:

(a) The continued high rate of suicidal deaths among young people throughout the State party, particularly among youth belonging to the Aboriginal community;

(b) The increasingly high rates of children diagnosed with behavioural problems and the over-medication of children without expressly examining root causes or providing parents and children with alternative support and therapy. In this context, it is of concern to the Committee that educational resources and funding systems for practitioners are geared toward a "quick fix;"

(c) The violation of both children's and parents' informed consent based on adequate information provided by health practitioners.

66. **The Committee recommends that the State party:**

(a) **Strengthen and expand the quality of interventions to prevent suicide among children with particular attention to early detection, and expand access to confidential psychological and counselling services in all schools, including social work support in the home;**

(b) **Establish a system of expert monitoring of the excessive use of psycho stimulants to children, and take action to understand the root causes and improve the accuracy of diagnoses while improving access to behavioural and psychological interventions;**

(c) **Consider the establishment of a monitoring mechanism in each province and territory, under the ministries of health, to monitor and audit the practice of informed consent by health professionals in relation to the use of psychotropic drugs on children.**

#### **Standard of living**

67. While the Committee appreciates that the basic needs of the majority of children in the State party are met, it is concerned that income inequality is widespread and growing and that no national strategy has been developed to comprehensively address child poverty despite a commitment by Parliament to end child poverty by 2000. The Committee is especially concerned about the inequitable distribution of tax benefits and social transfers for children. Furthermore, the Committee is concerned that the provision of welfare services to Aboriginal children, African Canadian and children of other minorities is not comparable in quality and accessibility to services provided to other children in the State party and is not adequate to meet their needs.

68. **The Committee recommends that the State party:**

(a) **Develop and implement a national, coordinated strategy to eliminate child poverty as part of the broader national poverty reduction strategy, which should include annual targets to reduce child poverty;**

(b) **Assess the impact of tax benefits and social transfers and ensure that they give priority to children in the most vulnerable and disadvantaged situations;**

(c) Ensure that funding and other support, including welfare services, provided to Aboriginal, African-Canadian, and other minority children, including welfare services, is comparable in quality and accessibility to services provided to other children in the State party and is adequate to meet their needs.

## H. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)

### Education, including vocational training and guidance

69. While welcoming the State party's various initiatives to improve educational outcomes for children in vulnerable situations, the Committee is concerned about the following:

- (a) The need for user fees at the compulsory education level for required materials and activities that are part of the basic public school service for children;
- (b) The high dropout rate of Aboriginal and African-Canadian children;
- (c) The inappropriate and excessive use of disciplinary measures applied to Aboriginal and African Canadian children in school, such as resorting to suspension and referring children to the police, as well as the overrepresentation of these groups in alternative schools;
- (d) The high number of segregated schools primarily for minority and disabled children, which leads to discrimination;
- (e) The widespread incidence of bullying in schools.

70. The Committee recommends that the State party:

- (a) Take measures to abolish the need for user fees at the level of compulsory education;
- (b) Develop a national strategy, in partnership with Aboriginal and African Canadian communities, to address the high dropout rate of Aboriginal and African Canadian children;
- (c) Take measures to prevent and avoid suspension and the referral of children to police as a disciplinary measure for Aboriginal and African Canadian children and prevent their reassignment to alternative schools while at the same time ensuring that professionals are provided with the necessary skills and knowledge to tackle the problems;
- (d) Ensure integration of minority and disabled children in educational settings in order to prevent segregation and discrimination;
- (e) Enhance the measures undertaken to combat all forms of bullying and harassment, such as improving the capacity of teachers and all those working at schools and of students to accept diversity at school and in care institutions, and improve conflict resolution skills of children, parents, and professionals.

### Early childhood education and care

71. The Committee is concerned that despite the State party's significant resources, there has been a lack of funding directed towards the improvement of early childhood development and affordable and accessible early childhood care and services. The Committee is also concerned at the high cost of childcare, the lack of available places for children, the absence of uniform training requirements for all childcare staff and of

standards of quality care. The Committee notes that early childhood care and education continues to be inadequate for children under four years of age. Furthermore, the Committee is concerned that the majority of early childhood care and education services in the State party are provided by private, profit-driven institutions, resulting in such services being unaffordable for most families.

**72. Referring to its general comment No. 7 (2005), the Committee recommends that the State party further improve the quality and coverage of its early childhood care and education, including by:**

**(a) Prioritizing the provision of such care to children between the age of 0 and 3 years, with a view to ensuring that it is provided in a holistic manner that includes overall child development and the strengthening of parental capacity;**

**(b) Increasing the availability of early childhood care and education for all children, by considering providing free or affordable early childhood care whether through State-run or private facilities;**

**(c) Establishing minimum requirements for training of child care workers and for improvement of their working conditions;**

**(d) Conducting a study to provide an equity impact analysis of current expenditures on early childhood policies and programmes, including all child benefits and transfers, with a focus on children with higher vulnerability in the early years.**

#### **I. Special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d), and 32-36 of the Convention)**

##### **Asylum-seeking and refugee children**

73. The Committee welcomes the State party's progressive policy on economic migration. Nevertheless, the Committee is gravely concerned at the recent passage of the law entitled, Protecting Canada's Immigration System Act, in June 2012 authorizing the detention of children from ages 16 to 18 for up to one year due to their irregular migrant status. Furthermore, the Committee regrets that notwithstanding its previous recommendation (CRC/C/15/Add.215, para. 47, 2003), the State party has not adopted a national policy on unaccompanied and asylum-seeking children and is concerned that the Immigration and Refugee Protection Act makes no distinction between accompanied and unaccompanied children and does not take into account the best interests of the child. The Committee is also deeply concerned that the frequent detention of asylum-seeking children is being done without consideration for the best interests of the child. Furthermore, while acknowledging that a representative is appointed for unaccompanied children, the Committee notes with concern that they are not provided with a guardian on a regular basis. Additionally, the Committee is concerned that Roma and other migrant children often await a decision about their deportation, in an uncertain status, for prolonged periods of time, even years.

**74. The Committee urges the State party to bring its immigration and asylum laws into full conformity with the Convention and other relevant international standards and reiterates its previous recommendations (CRC/C/15/Add.215, para. 47, 2003). In doing so, the State party is urged to take into account the Committee's general comment No. 6 (2005) on. In addition, the Committee urges the State party to:**

**(a) Reconsider its policy of detaining children who are asylum-seeking, refugees and/or irregular migrants; and ensure that detention is only used in**

exceptional circumstances, in keeping with the best interests of the child, and subject to judicial review;

(b) Ensure that legislation and procedures use the best interests of the child as the primary consideration in all immigration and asylum processes, that determination of the best interests is consistently conducted by professionals who have been adequately applying such procedures;

(c) Exeditiously establish the institution of independent guardianships for unaccompanied migrant children;

(d) Ensure that cases of asylum-seeking children progress quickly so as to prevent children from waiting long periods of time for the decisions;

(e) Consider implementing the United Nations High Commission for Refugees Guidelines on International Protection No.8: Child Asylum Claims under articles 1(A)2 and 1(F) of the 1951 Convention. In implementing this recommendation, the Committee stresses the need for the State party to pay particular attention to ensuring that its policies and procedures for children in asylum-seeking, refugee and/or immigration detention give due primacy to the principle of the best interests of the child and that immigration authorities are trained on the principle and procedures of the best interest of the child.

#### **Children in armed conflict**

75. While noting with appreciation oral responses provided by the delegation during the dialogue, the Committee seriously regrets the absence of information to the follow up on implementation of the Optional Protocol to the Convention on the involvement of children in armed conflict pursuant to article 8, paragraph 2. The Committee expresses deep concern that despite the recommendation provided in its concluding observations (CRC/OPAC/CAN/CO/1, para. 9, 2006) to give priority, in the process of voluntary recruitment, to those who are oldest and to consider increasing the age of voluntary recruitment, the State party has not considered measures to this effect. The Committee additionally expresses concern that recruitment programmes may in fact actively target Aboriginal youth and are conducted at high school premises.

76. The Committee reiterates its previous recommendations (CRC/OPAC/CAN/CO/1) and recommends that the State party include their implementation and follow up to the Optional Convention on the involvement of children in armed conflict in its next periodic report to the Committee on the Rights of the Child. The Committee further recommends that the State party consider raising the age of voluntary recruitment to 18, and in the meantime give priority to those who are oldest in the process of voluntary recruitment. The Committee further recommends that Aboriginal or any other children in vulnerable situations not be actively targeted for recruitment and that the State party reconsider conducting these programmes at high school premises.

77. The Committee welcomes the recent return of Omar Kadr to the custody of the State party. However, the Committee is concerned that as a former child soldier, Omar Kadr has not been accorded the rights and appropriate treatment under the Convention. In particular, the Committee is concerned that he experienced grave violations of his human rights, which the Canadian Supreme Court recognized, including his maltreatment during his years of detention in Guantanamo, and that he has not been afforded appropriate redress and remedies for such violations.

78. The Committee urges the State party to promptly provide a rehabilitation programme for Omar Kadr that is consistent with the Paris Principles and Guidelines

**on Children Associated with Armed Forces or Armed Groups and ensure that Omar Khadr is provided with an adequate remedy for the human rights violations that the Supreme Court of Canada ruled he experienced.**

#### **Economic exploitation, including child labour**

79. The Committee regrets the lack of information provided in the State party's report regarding child labour and exploitation, and notes with concern that data on child labour is not systematically collected in all provinces and territories. The Committee is also concerned that the State party lacks federal legislation establishing the minimum age of employment within the provinces and territories. The Committee also expresses concern that in some provinces and territories, children of 16 years of age are permitted to perform certain types of hazardous and dangerous work.

80. **The Committee recommends that the State party:**

(a) **Establish a national minimum age of 16 for employment, which is consistent with the age of compulsory education;**

(b) **Harmonize province and territory legislation to ensure adequate protection for all children under the age of 18 from hazardous and unsafe working environments;**

(c) **Take steps to establish a unified mechanism for systematic data collection on incidences of hazardous child labour and working conditions, disaggregated by age, sex, geographical location and socio-economic background as a form of public accountability for protection of the rights of children;**

(d) **Consider ratifying ILO Convention No. 138 (1973) concerning the minimum age for admission to employment.**

#### **Sale, trafficking and abduction**

81. The Committee welcomes the passage of Bill C-268 in 2010, which requires minimum mandatory sentences for persons convicted of child trafficking. However, the Committee is concerned about the weak capacity of law enforcement organizations to identify and subsequently protect child victims of trafficking and the low number of investigations and prosecutions in this respect. The Committee is also concerned that due to the complexity of most child trafficking cases, law enforcement officials and prosecutors do not have clear guidelines for investigation and are not always aware of how to best lay charges.

82. **The Committee urges the State party to provide systematic and adequate training to law enforcement officials and prosecutors with the view of protecting all child victims of trafficking and improving enforcement of existing legislation. The Committee recommends that such training include awareness-raising on the applicable sections of the Criminal Code criminalizing child trafficking, best practices for investigation procedures, and specific instructions on how to protect child victims.**

#### **Help lines**

83. The Committee notes as positive the existence of a toll-free helpline for children, which seems to be used by a significant number of children within the State party who have sought psycho-social support for cases of depression, sexual exploitation, and school bullying. The Committee is however concerned that the State party has provided limited resources for the effective functioning of such a helpline.

84. **The Committee urges the State party to provide financial and technical support to this helpline in order to maintain it and ensure that it provides 24 hour services throughout the State party. The Committee also urges the State party to promote awareness on how children can access the helpline.**

#### **Administration of juvenile justice**

85. The Committee notes as positive that Bill C-10 (Safe Streets and Communities Act of 2012) prohibits the imprisonment of children in adult correctional facilities. Nevertheless, the Committee is deeply concerned at the fact that the 2003 Youth Criminal Justice Act, which was generally in conformity with the Convention, was in effect amended by the adoption of Bill C-10 and that the latter is excessively punitive for children and not sufficiently restorative in nature. The Committee also regrets that there was no child rights assessment or mechanism to ensure that Bill C-10 complied with the provisions of the Convention. In particular, the Committee expresses concern that:

(a) No action has been undertaken by the State party to increase the minimum age of criminal responsibility (CRC/C/15/Add.215, para. 57, 2003);

(b) Children under 18 are tried as adults, in relation to the circumstances or the gravity of their offence;

(c) The increased use of detention reduces protection of privacy, and leads to reduction in the use of extrajudicial measures, such as diversion;

(d) The excessive use of force, including the use of tasers, by law enforcement officers and personnel in detention centres against children during the arrest stage and in detention;

(e) Aboriginal and African Canadian children and youth are overrepresented in detention with statistics, showing for example, that Aboriginal youth are more likely to be involved in the criminal justice system than to graduate from high school;

(f) Teenage girls are placed in mixed-gender youth prisons with cross-gender monitoring by guards, increasing the risk of exposing girls to incidents of sexual harassment and sexual assault.

86. **The Committee recommends that the State party bring the juvenile justice system fully in line with the Convention, including Bill C-10 (2012 Safe Streets and Communities Act) in particular articles 37, 39 and 40, and with other relevant standards, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee's general comment No. 10 (2007). In particular, the Committee urges the State party to:**

(a) **Increase the minimum age of criminal responsibility;**

(b) **Ensure that no person under 18 is tried as an adult, irrespective of the circumstances or the gravity of his/her offence;**

(c) **Develop alternatives to detention by increasing the use of extrajudicial measures, such as diversion, and ensure the protection of privacy of children within the juvenile justice system;**

(d) **Develop guidelines for restraint and use of force against children in arrest and detention for use by all law enforcement officers and personnel in detention facilities, including the abolishment of use of tasers;**

(e) Conduct an extensive study of systemic overrepresentation of Aboriginal and African Canadian children and youth in the criminal justice system and develop an effective action plan towards eliminating the disparity in rates of sentencing and incarceration of Aboriginal and African Canadian children and youth, including activities such as training of all legal, penitentiary and law enforcement professionals on the Convention;

(f) Ensure that girls are held separately from boys and that girls are monitored by female prison guards so as to better protect girls from the risk of sexual violence and exploitation

#### **J. Ratification of international human rights instruments**

87. The Committee encourages the State party, in order to further strengthen the fulfilment of children's rights, to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. The Committee further urges the State party to ratify ILO Conventions No. 138 (1973) and No. 189 (2011) concerning decent work for domestic workers.

#### **K. Cooperation with regional and international bodies**

88. The Committee recommends that the State party cooperate with the Organization of American States (OAS) towards the implementation of the Convention and other human rights instruments, both in the State party and in other OAS member States.

#### **L. Follow-up and dissemination**

89. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, *inter alia*, transmitting them to the Head of State, Parliament, relevant ministries, the Supreme Court, and to heads of provincial and territorial authorities for appropriate consideration and further action.

90. The Committee further recommends that the third and fourth periodic report and written replies by the State party and the related recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and its Optional Protocols and of their implementation and monitoring.

#### **M. Next report**

91. The Committee invites the State party to submit its next combined fifth and sixth periodic report by 11 July 2018 and to include in it information on the implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2 and Corr. 1) and reminds the State party that future reports should be in compliance with the guidelines and not exceed 60 pages. In the event that a report exceeding the page limitations is submitted, the State party will be asked to review and eventually resubmit the report in accordance with the above-mentioned

guidelines. The Committee reminds the State party that, if it is not in a position to review and resubmit the report, translation of the report for purposes of examination of the treaty body cannot be guaranteed.

92. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved at by the fifth Inter-Committee Meeting of the human rights treaty bodies in June 2006 (HRI/GEN/2/Rev.6, chap. I).

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Canadian Coalition  
for the Rights of Children  
Coalition canadienne  
pour les droits des enfants

## Children's Right to a Healthy Environment: Opportunity in Bill C-69

Bill C-69 makes significant improvements in the federal environmental review process. It is also an opportunity for Canada to take seriously its responsibility to protect the rights of children to a healthy environment. It is an opportunity to implement the Convention on the Rights of the Child and take action on one of the recommendations Canada received five years ago, in the last review of how Canada implements children's rights.

The Canadian Coalition for the Rights of Children offers the following analysis and recommendations for consideration before final approval of Bill C-69.

### I. Introduction

When members of the Coalition gather young people to discuss their rights, a healthy environment is frequently identified as a high priority and a matter of great concern. One of the concerns voiced by young people is that short-term interests often seem to get more attention than impacts for their health, including healthy conditions for their future and for future generations. They also name the reality that young people have no voice in making decisions that will have a significant impact on their lives.

The Convention on the Rights of the Child, which addresses these factors, is a helpful tool to guide governance and public policy formation for intergenerational objectives.

The goal of Bill C-69 is a more comprehensive and integrated approach to making decisions about development proposals that impact the environment. It includes, for example, consideration of the impacts for indigenous peoples and recognition of gender differences. It is unfortunate that it does not include specific provisions to ensure consideration of potential impacts for children to protect their right to a healthy environment. The Convention on the Rights of the Child identifies the right to a healthy environment as part of the right to health.

This omission can be corrected before final approval. Below is a description of relevant provisions in the Convention on the Rights of the Child; the recommendations Canada received during the last review; and recommendations for inclusion in Bill C-69.

This is Exhibit "E" referred to in the Affidavit of  
Katherine Vandergrift, sworn before me at  
Ottawa this  
29th day of November, 2018.

.....  
A Commissioner for taking Affidavits within  
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## II. Children's Rights and Governance for the Environment

Canada has several obligations under the Convention on the Rights of the Child which relate to the mandate, the structure, and the processes of the proposed Impact Assessment Agency of Canada and Canadian Energy Regulator in Bill C-69. These include the following:

### II. A. Best interests of children are high priority (Article 3)

The Convention requires focused consideration of the best interests of children, separate from those of adults, because they may not always be the same. Impacts for children are to be given priority because of the added vulnerability of children and the fact they do not have other ways to protect their own interests.

Some proposed projects that affect the environment will have different impacts for children than for adults. Research shows that some pollutants cause more harm to children because their developing bodies absorb them more readily. Children are more vulnerable to some toxins in the air and contamination of the water they use. Bill C-69 recognizes the need to consider impacts for different genders and population groups, but it does not name children for separate consideration. Incorporating Canada's commitment to give priority to the best interests of children and including consideration of impacts for children in the mandate of the new impact assessment agency would improve the impact assessments as well as fulfill Canada's obligations under the Convention.

The UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, identified the importance of preventive action to protect the best interests of the child:

*The best interests of the child are best served by preventing exposure to toxic chemicals and pollution, and taking precautionary measures with respect to those substances whose risks are not well understood. Unfortunately, industrial competitiveness, risk management options and cost-benefit considerations are prioritized over the best interests of the child. (Human Rights Council, Report of the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Thirty-third session, 2 August, 2016, A 21, A/HRC/33/41, p. 7.*

The concept of sustainable development theoretically includes consideration for future generations; but unless that objective is translated into specific provisions, shorter-term balancing of economic, social, and environmental objectives may be given higher priority than long-term impacts. Incorporating consideration for the best interests of children into the



mechanisms for decision-making to protect the environment could help to ensure longer-term interests are given appropriate weight

## **II. B. Right to life and maximum development of potential (Article 6)**

In addition to the right to live, the Convention obliges states parties to ensure “*to the maximum extent possible the survival and development of the child.*” (Article 6) The Convention goes beyond minimum standards; that is relevant for the criteria we use in making decisions that impact the quality of the environment and the social context within which children develop.

## **II. C. Right to healthy living conditions (Article 24)**

Article 24, the articulation of a child’s right to health, includes specific reference to “*adequate nutritious food and clean drinking water, taking into consideration the dangers and risks of environmental pollution.*” Under health education and support for families, it specifically names “*hygiene and environmental sanitation and the prevention of accidents.*”

Environmental pollution has a differential impact on the health of children because of their stages of development and additional vulnerability. It is dangerous to assume that health impact assessments for adults are adequate to assess impacts for children and ensure the right of children to a healthy environment. Potential impacts for children require focused attention in the mandate and decision-making process of the proposed Impact Assessment Agency of Canada.

## **II. D. Right to have views taken into consideration (Article 12)**

Under the Convention, duty-bearers are required to provide an opportunity for young people to be heard in all decision-making processes that affect them, through age-appropriate means. (Article 12)

Furthermore, experience shows that involving young people in making decisions that affect their well-being leads to more effective outcomes.

Given that young people are affected by environmental decisions in both the short and long term, they should have an identified role in the decision-making processes under the proposed Impact Assessment Agency.

## **III. Recommendations to Canada in Last Review of Children’s Rights**

Canada received many recommendations to take the necessary steps to incorporate the Convention on the Rights of the Child into all areas of Canadian public policy. Canada was



asked, for example, to establish procedures to ensure that the best interests of children are given high priority in each area of public policy. Incorporating the rights of children into the structures for environmental protection is an important area for attention.

In addition, in a section on Respect for the Views of the Child, the environment was specifically named.

*“Specifically, the Committee recommends that the views of the children be a requirement for all official decision-making process that relate to children, including custody cases, child welfare decisions, criminal justice, immigration, and the environment.”*

Committee on the Rights of the Child, *Concluding Observations: Canada*, paragraph 37, (CRC/C/CAN/CO/3-4, p. 8)

#### **IV. Recommendations for Consideration in Bill C-69**

##### **IV. A: Purpose statement in the preamble to Bill C-69:**

The Coalition recommends that the Preamble for C-69 add children to the list of groups explicitly recognized in the following paragraph:

*And whereas the Government of Canada is committed to assessing how groups of women, men and gender-diverse people may experience policies, programs and projects and to taking actions that contribute to an inclusive and democratic society and allow all Canadians to participate fully in all spheres of their lives;*

In addition, the Coalition recommends that the purpose statement in the Preamble of Bill C-69 add the following statement to explicitly recognize Canada’s duties under the Convention on the Rights of the Children:

And whereas Canada is committed to give high priority to the best interests of children and realize their right to a healthy environment and to respect for their views, as articulated in the Convention on the Rights of the Child, which has been ratified by Canada and all provinces;

##### **IV. B. Factors to be considered**

The Coalition recommends the inclusion of an explicit requirement to specifically consider impacts for children in the lists of factors to be considered by both the Impact Assessment



Agency and the Canadian Energy Regulator. As stated by the Committee on the Rights of the Child,

*States should take explicit account of children's rights in assessments of laws, policies, action plans (strategic environmental assessments) and projects (environmental impact assessments), which are likely to have an impact on the environment. This includes recognizing children as a stakeholder group, adequately considering their rights, risks and vulnerabilities and addressing actual and potential impacts. (Committee on the Rights of the Child, *Children's Rights and the Environment: Report of 2016 Special Day of Discussion*, p. 33. Available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx>)*

#### **IV. C. Views of young people in public consultation processes**

The Coalition recommends that an explicit requirement to consider the views of young people potentially impacted by a proposal be included in the provisions for public consultation by both the Impact Assessment Agency and the Canadian Energy Regulator. As stated by the Committee on the Rights of the Child,

*States should ensure that all children are given opportunities to participate in discussions on the impacts of environmental issues and should build children's meaningful participation into environmental policy-making at all levels. (Committee on the Rights of the Child, *Children's Rights and the Environment: Report of the 2016 Day of Discussion*, p. 34. Available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx>)*

#### **IV. D. Expertise in agencies and composition of review panels**

The Coalition recommends that there be a requirement to include expertise in assessing impacts for children in the staff of agencies and composition of review panels established to do impact assessments for particular projects.

#### **Conclusion**

Including specific provisions to protect the rights of children to a healthy environment will improve the outcomes of the federal environmental review processes, as well as implement Canada's obligations under the Convention on the Rights of the Child.

Given the growing international attention to this area of children's rights, it will also contribute to Canada's international leadership in the areas of environmental protection and human rights.

For more information, send message to [info@rightsofchildren.ca](mailto:info@rightsofchildren.ca).

United Nations

CRC/C/GC/15



## Convention on the Rights of the Child

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### 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)\*

This is Exhibit "F" referred to in the Affidavit of  
Katherine Vandergrift, sworn before me at

*29th* Ottawa this  
28 day of November 2018.

*[Signature]*  
A Commissioner for taking Affidavits within

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\* Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).

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## I. Introduction

1. The present general comment is based on the importance of approaching children's health from a child-rights perspective that all children have the right to opportunities to survive, grow and develop, within the context of physical, emotional and social well-being, to each child's full potential. Throughout this general comment, "child" refers to an individual below the age of 18 years, in accordance with article 1 of the Convention on the Rights of the Child (hereinafter "the Convention"). Despite the remarkable achievements in fulfilling children's rights to health in recent years since the adoption of the Convention, significant challenges remain. The Committee on the Rights of the Child (hereinafter "the Committee") recognizes that most mortality, morbidity and disabilities among children could be prevented if there were political commitment and sufficient allocation of resources directed towards the application of available knowledge and technologies for prevention, treatment and care. The present general comment was prepared with the aim of providing guidance and support to States parties and other duty bearers to support them in respecting, protecting and fulfilling children's right to the enjoyment of the highest attainable standard of health (hereinafter "children's right to health").

2. The Committee interprets children's right to health as defined in article 24 as an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health. A holistic approach to health places the realization of children's right to health within the broader framework of international human rights obligations.

3. The Committee addresses this general comment to a range of stakeholders working in the fields of children's rights and public health, including policymakers, programme implementers and activists, as well as parents and children themselves. It is explicitly generic in order to ensure its relevance to a wide range of children's health problems, health systems and the varied contexts that exist in different countries and regions. It focuses primarily on article 24, paragraphs 1 and 2, and also addresses article 24, paragraph 4.<sup>1</sup> Implementation of article 24 must take into account all human rights principles, especially the guiding principles of the Convention, and must be shaped by evidence-based public health standards and best practices.

4. In the Constitution of the World Health Organization, States have agreed to regard health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.<sup>2</sup> This positive understanding of health provides the public health foundation for the present general comment. Article 24 explicitly mentions primary health care, an approach to which was defined in the Declaration of Alma-Ata<sup>3</sup> and reinforced by the World Health Assembly.<sup>4</sup> This approach emphasizes the need to eliminate exclusion and reduce social disparities in health; organize health services around people's needs and expectations; integrate health into related sectors; pursue collaborative models of

<sup>1</sup> Article 24, paragraph 3, is not covered because a general comment on harmful practices is currently being developed.

<sup>2</sup> Preamble to the Constitution of the World Health Organization (WHO) as adopted by the International Health Conference, New York, 22 July 1946.

<sup>3</sup> Declaration of Alma-Ata, International Conference on Primary Health Care, Alma-Ata, 6-12 September 1978.

<sup>4</sup> World Health Assembly, Primary health care including health systems strengthening, document A62/8.

policy dialogue; and increase stakeholder participation, including the demand for and appropriate use of services.

5. Children's health is affected by a variety of factors, many of which have changed during the past 20 years and are likely to continue to evolve in the future. This includes the attention given to new health problems and changing health priorities, such as: HIV/AIDS, pandemic influenza, non-communicable diseases, importance of mental health care, care of the new born, and neonatal and adolescent mortality; increased understanding of the factors that contribute to death, disease and disability in children, including structural determinants, such as the global economic and financial situation, poverty, unemployment, migration and population displacements, war and civil unrest, discrimination and marginalization. There is also a growing understanding of the impact of climate change and rapid urbanization on children's health; the development of new technologies, such as vaccines and pharmaceuticals; a stronger evidence base for effective biomedical, behavioural and structural interventions, as well as some cultural practices that relate to child-rearing and have proved to have a positive impact on children.

6. Advances in information and communication technologies have created new opportunities and challenges to achieve children's right to health. Despite the additional resources and technologies that have now become available to the health sector, many countries still fail to provide universal access to basic children's health promotion, prevention and treatment services. A wide range of different duty bearers need to be involved if children's right to health is to be fully realized and the central role played by parents and other caregivers needs to be better recognized. Relevant stakeholders will need to be engaged, working at national, regional, district and community levels, including governmental and non-governmental partners, private sector and funding organizations. States have an obligation to ensure that all duty bearers have sufficient awareness, knowledge and capacity to fulfil their obligations and responsibilities, and that children's capacity is sufficiently developed to enable them to claim their right to health.

## **II. Principles and premises for realizing children's right to health**

### **A. The indivisibility and interdependence of children's rights**

7. The Convention recognizes the interdependence and equal importance of all rights (civil, political, economic, social and cultural) that enable all children to develop their mental and physical abilities, personalities and talents to the fullest extent possible. Not only is children's right to health important in and of itself, but also the realization of the right to health is indispensable for the enjoyment of all the other rights in the Convention. Moreover, achieving children's right to health is dependent on the realization of many other rights outlined in the Convention.

### **B. Right to non-discrimination**

8. In order to fully realize the right to health for all children, States parties have an obligation to ensure that children's health is not undermined as a result of discrimination, which is a significant factor contributing to vulnerability. A number of grounds on which discrimination is proscribed are outlined in article 2 of the Convention, including the child's, parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. These also include sexual orientation, gender identity and health status, for example HIV status

and mental health.<sup>5</sup> Attention should also be given to any other forms of discrimination that might undermine children's health, and the implications of multiple forms of discrimination should also be addressed.

9. Gender-based discrimination is particularly pervasive, affecting a wide range of outcomes, from female infanticide/foeticide to discriminatory infant and young child feeding practices, gender stereotyping and access to services. Attention should be given to the differing needs of girls and boys, and the impact of gender-related social norms and values on the health and development of boys and girls. Attention also needs to be given to harmful gender-based practices and norms of behaviour that are ingrained in traditions and customs and undermine the right to health of girls and boys.

10. All policies and programmes affecting children's health should be grounded in a broad approach to gender equality that ensures young women's full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence.

11. Children in disadvantaged situations and under-served areas should be a focus of efforts to fulfil children's right to health. States should identify factors at national and subnational levels that create vulnerabilities for children or that disadvantage certain groups of children. These factors should be addressed when developing laws, regulations, policies, programmes and services for children's health, and work towards ensuring equity.

### C. The best interests of the child

12. Article 3, paragraph 1, of the Convention places an obligation on public and private social welfare institutions, courts of law, administrative authorities and legislative bodies to ensure that the best interests of the child are assessed and taken as a primary consideration in all actions affecting children. This principle must be observed in all health-related decisions concerning individual children or children as a group. Individual children's best interests should be based on their physical, emotional, social and educational needs, age, sex, relationship with parents and caregivers, and their family and social background, and after having heard their views according to article 12 of the Convention.

13. The Committee urges States to place children's best interests at the centre of all decisions affecting their health and development, including the allocation of resources, and the development and implementation of policies and interventions that affect the underlying determinants of their health. For example, the best interests of the child should:

- (a) Guide treatment options, superseding economic considerations where feasible;
- (b) Aid the resolution of conflict of interest between parents and health workers; and
- (c) Influence the development of policies to regulate actions that impede the physical and social environments in which children live, grow and develop.

14. The Committee underscores the importance of the best interests of the child as a basis for all decision-making with regard to providing, withholding or terminating

<sup>5</sup> General comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41)*, annex X, para. 6.

treatment for all children. States should develop procedures and criteria to provide guidance to health workers for assessing the best interests of the child in the area of health, in addition to other formal, binding processes that are in place for determining the child's best interests. The Committee in its general comment No. 3<sup>6</sup> has underlined that adequate measures to address HIV/AIDS can be undertaken only if the rights of children and adolescents are fully respected. The child's best interests should therefore guide the consideration of HIV/AIDS at all levels of prevention, treatment, care and support.

15. In its general comment No. 4, the Committee underlined the best interests of the child to have access to appropriate information on health issues.<sup>7</sup> Special attention must be given to certain categories of children, including children and adolescents with psychosocial disabilities. Where hospitalization or placement in an institution is being considered, this decision should be made in accordance with the principle of the best interests of the child, with the primary understanding that it is in the best interests of all children with disabilities to be cared for, as far as possible, in the community in a family setting and preferably within their own family with the necessary supports made available to the family and the child.

#### **D. Right to life, survival and development and the determinants of children's health**

16. Article 6 highlights the States parties' obligation to ensure the survival, growth and development of the child, including the physical, mental, moral, spiritual and social dimensions of their development. The many risks and protective factors that underlie the life, survival, growth and development of the child need to be systematically identified in order to design and implement evidence-informed interventions that address a wide range of determinants during the life course.

17. The Committee recognizes that a number of determinants need to be considered for the realization of children's right to health, including individual factors such as age, sex, educational attainment, socioeconomic status and domicile; determinants at work in the immediate environment of families, peers, teachers and service providers, notably the violence that threatens the life and survival of children as part of their immediate environment; and structural determinants, including policies, administrative structures and systems, social and cultural values and norms.<sup>8</sup>

18. Among the key determinants of children's health, nutrition and development are the realization of the mother's right to health<sup>9</sup> and the role of parents and other caregivers. A significant number of infant deaths occur during the neonatal period, related to the poor health of the mother prior to, and during, the pregnancy and the immediate post-partum

<sup>6</sup> General comment No. 3 (2003) on HIV/AIDS and the rights of the child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41)*, annex IX.

<sup>7</sup> General comment No. 4 (2003) on adolescent health and development in the context of the Convention, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41)*, annex X, para. 10.

<sup>8</sup> See general comment No. 13 (2011) on the right of the child to be free from all forms of violence, *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 41 (A/67/41)*, annex V.

<sup>9</sup> See Committee on the Elimination of Discrimination against Women, general recommendation No. 24 (1999) on women and health, *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 38 (A/54/38/Rev.1)*, chap. I, sect. A.

period, and to suboptimal breastfeeding practices. The health and health-related behaviours of parents and other significant adults have a major impact on children's health.

### **E. Right of the child to be heard**

19. Article 12 highlights the importance of children's participation, providing for children to express their views and to have such views seriously taken into account, according to age and maturity.<sup>10</sup> This includes their views on all aspects of health provisions, including, for example, what services are needed, how and where they are best provided, barriers to accessing or using services, the quality of the services and the attitudes of health professionals, how to strengthen children's capacities to take increasing levels of responsibility for their own health and development, and how to involve them more effectively in the provision of services, as peer educators. States are encouraged to conduct regular participatory consultations, which are adapted to the age and maturity of the child, and research with children, and to do this separately with their parents, in order to learn about their health challenges, developmental needs and expectations as a contribution to the design of effective interventions and health programmes.

### **F. Evolving capacities and the life course of the child**

20. Childhood is a period of continuous growth from birth to infancy, through the preschool age to adolescence. Each phase is significant as important developmental changes occur in terms of physical, psychological, emotional and social development, expectations and norms. The stages of the child's development are cumulative and each stage has an impact on subsequent phases, influencing the children's health, potential, risks and opportunities. Understanding the life course is essential in order to appreciate how health problems in childhood affect public health in general.

21. The Committee recognizes that children's evolving capacities have a bearing on their independent decision-making on their health issues. It also notes that there are often serious discrepancies regarding such autonomous decision-making, with children who are particularly vulnerable to discrimination often less able to exercise this autonomy. It is therefore essential that supportive policies are in place and that children, parents and health workers have adequate rights-based guidance on consent, assent and confidentiality.

22. To respond and understand children's evolving capacities and the different health priorities along the life cycle, data and information that are collected and analysed should be disaggregated by age, sex, disability, socioeconomic status and sociocultural aspects and geographic location, in accordance with international standards. This makes it possible to plan, develop, implement and monitor appropriate policies and interventions that take into consideration the changing capacities and needs of children over time, and that help to provide relevant health services for all children.

<sup>10</sup> See general comment No. 12 (2009) on the right of the child to be heard, *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 41 (A/65/41)*, annex IV.

### III. Normative content of article 24

#### A. Article 24, paragraph 1

**“States parties recognize the right of the child to the enjoyment of the highest attainable standard of health”**

23. The notion of “the highest attainable standard of health” takes into account both the child’s biological, social, cultural and economic preconditions and the State’s available resources, supplemented by resources made available by other sources, including non-governmental organizations, the international community and the private sector.

24. Children’s right to health contains a set of freedoms and entitlements. The freedoms, which are of increasing importance in accordance with growing capacity and maturity, include the right to control one’s health and body, including sexual and reproductive freedom to make responsible choices. The entitlements include access to a range of facilities, goods, services and conditions that provide equality of opportunity for every child to enjoy the highest attainable standard of health.

**“and to facilities for the treatment of illness and rehabilitation of health”**

25. Children are entitled to quality health services, including prevention, promotion, treatment, rehabilitation and palliative care services. At the primary level, these services must be available in sufficient quantity and quality, functional, within the physical and financial reach of all sections of the child population, and acceptable to all. The health-care system should not only provide health-care support but also report the information to relevant authorities for cases of rights violations and injustice. Secondary and tertiary level care should also be made available, to the extent possible, with functional referral systems linking communities and families at all levels of the health system.

26. Comprehensive primary health-care programmes should be delivered alongside proven community-based efforts, including preventive care, treatment of specific diseases and nutritional interventions. Interventions at the community level should include the provision of information, services and commodities as well as prevention of illness and injury through, e.g., investment in safe public spaces, road safety and education on injury, accident and violence prevention.

27. States should ensure an appropriately trained workforce of sufficient size to support health services for all children. Adequate regulation, supervision, remuneration and conditions of service are also required, including for community health workers. Capacity development activities should ensure that service providers work in a child-sensitive manner and do not deny children any services to which they are entitled by law. Accountability mechanisms should be incorporated to ensure that quality assurance standards are maintained.

**“States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services”**

28. Article 24, paragraph 1, imposes a strong duty of action by States parties to ensure that health and other relevant services are available and accessible to all children, with special attention to under-served areas and populations. It requires a comprehensive primary health-care system, an adequate legal framework and sustained attention to the underlying determinants of children’s health.

29. Barriers to children’s access to health services, including financial, institutional and cultural barriers, should be identified and eliminated. Universal free birth registration is a

prerequisite and social protection interventions, including social security such as child grants or subsidies, cash transfers and paid parental leave, should be implemented and seen as complementary investments.

30. Health-seeking behaviour is shaped by the environment in which it takes place, including, inter alia, the availability of services, levels of health knowledge, life skills and values. States should seek to ensure an enabling environment to encourage appropriate health-seeking behaviour by parents and children.

31. In accordance with their evolving capacities, children should have access to confidential counselling and advice without parental or legal guardian consent, where this is assessed by the professionals working with the child to be in the child's best interests. States should clarify the legislative procedures for the designation of appropriate caregivers for children without parents or legal guardians, who can consent on the child's behalf or assist the child in consenting, depending on the child's age and maturity. States should review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion.

## **B. Article 24, paragraph 2**

32. In accordance with article 24, paragraph 2, States should put in place a process for identifying and addressing other issues relevant to children's right to health. This requires, inter alia, an in-depth analysis of the current situation in terms of priority health problems and responses, and the identification and implementation of evidence-informed interventions and policies that respond to key determinants and health problems, in consultation with children when appropriate.

### **Article 24, paragraph 2 (a). "To diminish infant and child mortality"**

33. States have an obligation to reduce child mortality. The Committee urges particular attention to neonatal mortality, which constitutes an increasing proportion of under-5 mortality. Additionally, States parties should also address adolescent morbidity and mortality, which is generally under-prioritized.

34. Interventions should include attention to still births, pre-term birth complications, birth asphyxia, low birth weight, mother-to-child transmission of HIV and other sexually transmitted infections, neonatal infections, pneumonia, diarrhoea, measles, under- and malnutrition, malaria, accidents, violence, suicide and adolescent maternal morbidity and mortality. Strengthening health systems to provide such interventions to all children in the context of the continuum of care for reproductive, maternal, newborn and children's health, including screening for birth defects, safe delivery services and care for the newborn are recommended. Maternal and perinatal mortality audits should be conducted regularly for the purposes of prevention and accountability.

35. States should put particular emphasis on scaling up simple, safe and inexpensive interventions that have proven to be effective, such as community-based treatments for pneumonia, diarrhoeal disease and malaria, and pay particular attention to ensuring full protection and promotion of breastfeeding practices.

**Article 24, paragraph 2 (b). “To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care”**

36. States should prioritize universal access for children to primary health-care services provided as close as possible to where children and their families live, particularly in community settings. While the exact configuration and content of services will vary from country to country, in all cases effective health systems will be required, including: a robust financing mechanism; a well-trained and adequately paid workforce; reliable information on which to base decisions and policies; well-maintained facilities and logistics systems to deliver quality medicines and technologies; and strong leadership and governance. Health-service provision within schools provides an important opportunity for health promotion, to screen for illness, and increases the accessibility of health services for in-school children.

37. Recommended packages of services should be used, for example the Essential Interventions, Commodities and Guidelines for Reproductive, Maternal, Newborn and Child Health.<sup>11</sup> States have an obligation to make all essential medicines on the World Health Organization Model Lists of Essential Medicines, including the list for children (in paediatric formulations where possible) available, accessible and affordable.

38. The Committee is concerned by the increase in mental ill-health among adolescents, including developmental and behavioural disorders; depression; eating disorders; anxiety; psychological trauma resulting from abuse, neglect, violence or exploitation; alcohol, tobacco and drug use; obsessive behaviour, such as excessive use of and addiction to the Internet and other technologies; and self-harm and suicide. There is growing recognition of the need for increased attention for behavioural and social issues that undermine children’s mental health, psychosocial wellbeing and emotional development. The Committee cautions against over-medicalization and institutionalization, and urges States to undertake an approach based on public health and psychosocial support to address mental ill-health among children and adolescents and to invest in primary care approaches that facilitate the early detection and treatment of children’s psychosocial, emotional and mental problems.

39. States have the obligation to provide adequate treatment and rehabilitation for children with mental health and psychosocial disorders while abstaining from unnecessary medication. The 2012 resolution of the World Health Assembly on the global burden of mental health disorders and the need for a comprehensive coordinated response from health and social sectors at the country level<sup>12</sup> notes that there is increasing evidence of the effectiveness and cost-effectiveness of interventions to promote mental health and prevent mental disorders, particularly in children. The Committee strongly encourages States to scale up these interventions by mainstreaming them through a range of sectoral policies and programmes, including health, education and protection (criminal justice), with the involvement of families and communities. Children at risk because of their family and social environments require special attention in order to enhance their coping and life skills and promote protective and supportive environments.

40. There is a need to recognize the particular challenges to children’s health for children affected by humanitarian emergencies, including those resulting in large-scale displacements due to natural or man-made disasters. All possible measures should be taken to ensure that children have uninterrupted access to health services, to (re)unite them with their families and to protect them not only with physical support, such as food and clean

<sup>11</sup> The Partnership for Maternal, Newborn and Child Health, *A Global Review of the Key Interventions Related to Reproductive, Maternal, Newborn and Child Health* (Geneva, 2011).

<sup>12</sup> Resolution WHA65.4, adopted at the Sixty-fifth World Health Assembly on 25 May 2012.

water, but also to encourage special parental or other psychosocial care to prevent or address fear and traumas.

**Article 24, paragraph 2 (c). “To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”**

**(a) The application of readily available technology**

41. As new, proven technologies in children’s health, including drugs, equipment and interventions, become available, States should introduce them into policies and services. Mobile arrangements and community-based efforts can substantially reduce some risks and should be made universally available and these include: immunization against the common childhood diseases; growth and developmental monitoring, especially in early childhood; vaccination against human papillomavirus for girls; tetanus toxoid injections for pregnant women; access to oral rehydration therapy and zinc supplementation for diarrhoea treatment; essential antibiotics and antiviral drugs; micronutrient supplements, such as vitamins A and D, iodized salt and iron supplements; and condoms. Health workers should advise parents how they can access and administer these simple technologies as required.

42. The private sector, which includes business enterprises and not-for-profit organizations that impact on health, is taking an increasingly important role in the development and refinement of technology, drugs, equipment, interventions and processes that can contribute to significant advances in children’s health. States should ensure that benefits reach all children who need them. States can also encourage public-private partnerships and sustainability initiatives that can increase access and affordability of health technology.

**(b) The provision of adequate nutritious foods**

43. Measures for fulfilling States’ obligations to ensure access to nutritionally adequate, culturally appropriate and safe food<sup>13</sup> and to combat malnutrition will need to be adopted according to the specific context. Effective direct nutrition interventions for pregnant women include addressing anaemia and folic acid and iodine deficiency and providing calcium supplementation. Prevention and management of pre-eclampsia and eclampsia, should be ensured for all women of reproductive age to benefit their health and ensure healthy foetal and infant development.

44. Exclusive breastfeeding for infants up to 6 months of age should be protected and promoted and breastfeeding should continue alongside appropriate complementary foods preferably until two years of age, where feasible. States’ obligations in this area are defined in the “protect, promote and support” framework, adopted unanimously by the World Health Assembly.<sup>14</sup> States are required to introduce into domestic law, implement and enforce internationally agreed standards concerning children’s right to health, including the International Code on Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions, as well as the World Health Organization Framework

<sup>13</sup> See International Covenant on Economic, Social and Cultural Rights, art. 11, and Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food, *Official Records of the Economic and Social Council, 2011, Supplement No. 2 (E/2000/22)*, annex V.

<sup>14</sup> See WHO and United Nations Children’s Fund (UNICEF), *Global Strategy for Infant and Young Child Feeding* (Geneva, 2003).

Convention on Tobacco Control. Special measures should be taken to promote community and workplace support for mothers in relation to pregnancy and breastfeeding and feasible and affordable childcare services; and compliance with the International Labour Organization Convention No. 183 (2000) concerning the revision of the Maternity Protection Convention (Revised), 1952.

45. Adequate nutrition and growth monitoring in early childhood are particularly important. Where necessary, integrated management of severe acute malnutrition should be expanded through facility and community-based interventions, as well as treatment of moderate acute malnutrition, including therapeutic feeding interventions.

46. School feeding is desirable to ensure all pupils have access to a full meal every day, which can also enhance children's attention for learning and increase school enrolment. The Committee recommends that this be combined with nutrition and health education, including setting up school gardens and training teachers to improve children's nutrition and healthy eating habits.

47. States should also address obesity in children, as it is associated with hypertension, early markers of cardiovascular disease, insulin resistance, psychological effects, a higher likelihood of adult obesity, and premature death. Children's exposure to "fast foods" that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances should be limited. The marketing of these substances – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled.

**(c) The provision of clean drinking water**

48. Safe and clean drinking water and sanitation are essential for the full enjoyment of life and all other human rights.<sup>15</sup> Government departments and local authorities responsible for water and sanitation should recognize their obligation to help realize children's right to health, and actively consider child indicators on malnutrition, diarrhoea and other water-related diseases and household size when planning and carrying out infrastructure expansion and the maintenance of water services, and when making decisions on amounts for free minimum allocation and service disconnections. States are not exempted from their obligations, even when they have privatized water and sanitation.

**(d) Environmental pollution**

49. States should take measures to address the dangers and risks that local environmental pollution poses to children's health in all settings. Adequate housing that includes non-dangerous cooking facilities, a smoke-free environment, appropriate ventilation, effective management of waste and the disposal of litter from living quarters and the immediate surroundings, the absence of mould and other toxic substances, and family hygiene are core requirements to a healthy upbringing and development. States should regulate and monitor the environmental impact of business activities that may compromise children's right to health, food security and access to safe drinking water and to sanitation.

50. The Committee draws attention to the relevance of the environment, beyond environmental pollution, to children's health. Environmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children's health and exacerbates health disparities. States should, therefore, put children's health concerns at the centre of their climate change adaptation and mitigation strategies.

<sup>15</sup> General Assembly resolution 64/292 on the human right to water and sanitation.

**Article 24, paragraph 2 (d). “To ensure appropriate pre-natal and post-natal health care for mothers”**

51. The Committee notes that preventable maternal mortality and morbidity constitute grave violations of the human rights of women and girls and pose serious threats to their own and their children’s right to health. Pregnancy and child birth are natural processes, with known health risks that are susceptible to both prevention and therapeutic responses, if identified early. Risk situations can occur during pregnancy, delivery and the ante- and postnatal periods and have both short- and long-term impact on the health and well-being of both mother and child.

52. The Committee encourages States to adopt child-sensitive health approaches throughout different periods of childhood such as (a) the baby-friendly hospital initiative<sup>16</sup> which protects, promotes and supports rooming-in and breastfeeding; (b) child-friendly health policies focused on training health workers to provide quality services in a way that minimizes the fear, anxiety and suffering of children and their families; and (c) adolescent-friendly health services which require health practitioners and facilities to be welcoming and sensitive to adolescents, to respect confidentiality and to deliver services that are acceptable to adolescents.

53. The care that women receive before, during and after their pregnancy has profound implications for the health and development of their children. Fulfilling the obligation to ensure universal access to a comprehensive package of sexual and reproductive health interventions should be based on the concept of a continuum of care from pre-pregnancy, through pregnancy, childbirth and throughout the post-partum period. Timely and good-quality care throughout these periods provides important opportunities to prevent the intergenerational transmission of ill-health and has a high impact on the health of the child throughout the life course.

54. The interventions that should be made available across this continuum include, but are not limited to: essential health prevention and promotion, and curative care, including the prevention of neonatal tetanus, malaria in pregnancy and congenital syphilis; nutritional care; access to sexual and reproductive health education, information and services; health behaviour education (e.g. relating to smoking and substance use); birth preparedness; early recognition and management of complications; safe abortion services and post-abortion care; essential care at childbirth; and prevention of mother-to-child HIV transmission, and care and treatment of HIV-infected women and infants. Maternal and newborn care following delivery should ensure no unnecessary separation of the mother from her child.

55. The Committee recommends that social protection interventions include ensuring universal coverage or financial access to care, paid parental leave and other social security benefits, and legislation to restrict the inappropriate marketing and promotion of breast-milk substitutes.

56. Given the high rates of pregnancy among adolescents globally and the additional risks of associated morbidity and mortality, States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services. States should work to ensure that girls can make autonomous and informed decisions on their reproductive health. Discrimination based on adolescent pregnancy, such as expulsion from schools, should be prohibited, and opportunities for continuous education should be ensured.

<sup>16</sup> UNICEF/WHO, Baby-Friendly Hospital Initiative (1991).

57. Taking into account that boys and men are crucial to planning and ensuring healthy pregnancies and deliveries, States should integrate education, awareness and dialogue opportunities for boys and men into their policies and plans for sexual, reproductive and children's health services.

**Article 24, paragraph 2 (e). "To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of children's health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents"**

58. The obligations under this provision include providing health-related information and support in the use of this information. Health-related information should be physically accessible, understandable and appropriate to children's age and educational level.

59. Children require information and education on all aspects of health to enable them to make informed choices in relation to their lifestyle and access to health services. Information and life skills education should address a broad range of health issues, including: healthy eating and the promotion of physical activity, sports and recreation; accident and injury prevention; sanitation, hand washing and other personal hygiene practices; and the dangers of alcohol, tobacco and psychoactive substance use. Information and education should encompass appropriate information about children's right to health, the obligations of Governments, and how and where to access health information and services, and should be provided as a core part of the school curriculum, as well as through health services and in other settings for children who are not in school. Materials providing information about health should be designed in collaboration with children and disseminated in a wide range of public settings.

60. Sexual and reproductive health education should include self-awareness and knowledge about the body, including anatomical, physiological and emotional aspects, and should be accessible to all children, girls and boys. It should include content related to sexual health and well-being, such as information about body changes and maturation processes, and designed in a manner through which children are able to gain knowledge regarding reproductive health and the prevention of gender-based violence, and adopt responsible sexual behaviour.

61. Information about children's health should be provided to all parents individually or in groups, the extended family and other caregivers through different methods, including health clinics, parenting classes, public information leaflets, professional bodies, community organizations and the media.

**Article 24, paragraph 2 (f). "To develop preventive health care, guidance for parents and family planning education and services"**

**(a) Preventive health care**

62. Prevention and health promotion should address the main health challenges facing children within the community and the country as a whole. These challenges include diseases and other health challenges, such as accidents, violence, substance abuse and psychosocial and mental health problems. Preventive health care should address communicable and non-communicable diseases and incorporate a combination of biomedical, behavioural and structural interventions. Preventing non-communicable diseases should start early in life through the promotion and support of healthy and non-violent lifestyles for pregnant women, their spouses/partners and young children.

63. Reducing the burden of child injuries requires strategies and measures to reduce the incidence of drowning, burns and other accidents. Such strategies and measures should

include legislation and enforcement; product and environmental modification; supportive home visits and promotion of safety features; education, skills development and behaviour change; community-based projects; and pre-hospital and acute care, as well as rehabilitation. Efforts to reduce road traffic accidents should include legislating for the use of seatbelts and other safety devices, ensuring access to safe transport for children and according them due consideration in road planning and traffic control. The support of the related industry and the media is essential in this respect.

64. Recognizing violence as a significant cause of mortality and morbidity in children, particularly adolescents, the Committee emphasizes the need to create an environment that protects children from violence and encourages their participation in attitudinal and behavioural changes at home, in schools and in public spaces; to support parents and caregivers in healthy child-rearing; and to challenge attitudes which perpetuate the tolerance and condoning of violence in all forms, including by regulating the depiction of violence by mass media.

65. States should protect children from solvents, alcohol, tobacco and illicit substances, increase the collection of relevant evidence and take appropriate measures to reduce the use of such substances among children. Regulation of the advertising and sale of substances harmful to children's health and of the promotion of such items in places where children congregate, as well as in media channels and publications that are accessed by children are recommended.

66. The Committee encourages States parties that have not yet done so to ratify the international drug control conventions<sup>17</sup> and the World Health Organization Framework Convention on Tobacco Control. The Committee underscores the importance of adopting a rights-based approach to substance use and recommends that, where appropriate, harm reduction strategies should be employed to minimize the negative health impacts of substance abuse.

**(b) Guidance for parents**

67. Parents are the most important source of early diagnosis and primary care for small children, and the most important protective factor against high-risk behaviours in adolescents, such as substance use and unsafe sex. Parents also play a central role in promoting healthy child development, protecting children from harm due to accidents, injuries and violence and mitigating the negative effects of risk behaviours. Children's socialization processes, which are crucial for understanding and adjusting to the world in which they grow up, are strongly influenced by their parents, extended family and other caregivers. States should adopt evidence-based interventions to support good parenting, including parenting skills education, support groups and family counselling, in particular for families experiencing children's health and other social challenges.

68. In the light of the impact of corporal punishment on children's health, including fatal and non-fatal injury and the psychological and emotional consequences, the Committee reminds States of their obligation to take all appropriate legislative, administrative, social and educational measures to eliminate corporal punishment and other cruel or degrading forms of punishment in all settings, including the home.<sup>18</sup>

<sup>17</sup> Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

<sup>18</sup> General comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. *Official Records of the General Assembly, Sixty-third Session, Supplement No. 41 (A/63/41)*, annex II.

**(c) Family planning**

69. Family planning services should be situated within comprehensive sexual and reproductive health services and should encompass sexuality education, including counselling. They can be considered part of the continuum of services described in article 24, paragraph 2 (d), and should be designed to enable all couples and individuals to make sexual and reproductive decisions freely and responsibly, including the number, spacing and timing of their children, and to give them the information and means to do so. Attention should be given to ensuring confidential, universal access to goods and services for both married and unmarried female and male adolescents. States should ensure that adolescents are not deprived of any sexual and reproductive health information or services due to providers' conscientious objections.

70. Short-term contraceptive methods such as condoms, hormonal methods and emergency contraception should be made easily and readily available to sexually active adolescents. Long-term and permanent contraceptive methods should also be provided. The Committee recommends that States ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal.

**IV. Obligations and responsibilities****A. State parties' obligations to respect, protect and fulfil**

71. States have three types of obligations relating to human rights, including children's right to health: to respect freedoms and entitlements, to protect both freedoms and entitlements from third parties or from social or environmental threats, and to fulfil the entitlements through facilitation or direct provision. In accordance with article 4 of the Convention, States parties shall fulfil the entitlements contained in children's right to health to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

72. All States, regardless of their level of development, are required to take immediate action to implement these obligations as a matter of priority and without discrimination of any kind. Where the available resources are demonstrably inadequate, States are still required to undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of children's right to health. Irrespective of resources, States have the obligation not to take any retrogressive steps that could hamper the enjoyment of children's right to health.

73. The core obligations, under children's right to health, include:

- (a) Reviewing the national and subnational legal and policy environment and, where necessary, amending laws and policies;
- (b) Ensuring universal coverage of quality primary health services, including prevention, health promotion, care and treatment services, and essential drugs;
- (c) Providing an adequate response to the underlying determinants of children's health; and
- (d) Developing, implementing, monitoring and evaluating policies and budgeted plans of actions that constitute a human rights-based approach to fulfilling children's right to health.

74. States should demonstrate their commitment to progressive fulfilment of all obligations under article 24, prioritizing this even in the context of political or economic

crisis or emergency situations. This requires that children's health and related policies, programmes and services be planned, designed, financed and implemented in a sustainable manner.

## **B. Responsibilities of non-State actors**

75. The State is responsible for realizing children's right to health regardless of whether or not it delegates the provision of services to non-State actors. In addition to the State, a wide range of non-State actors who provide information and services related to children's health and its underlying determinants have specific responsibilities and impact in this regard.

76. States' obligations include a duty to promote awareness of non-State actors' responsibilities and to ensure that all non-State actors recognize, respect and fulfil their responsibilities to the child, applying due diligence procedures where necessary.

77. The Committee calls on all non-State actors engaged in health promotion and services, especially the private sector, including the pharmaceutical and health-technology industry as well as the mass media and health service providers, to act in compliance with the provisions of the Convention and to ensure compliance by any partners who deliver services on their behalf. Such partners include international organizations, banks, regional financial institutions, global partnerships, the private sector (private foundations and funds), donors and any other entities providing services or financial support to children's health, particularly in humanitarian emergencies or politically unstable situations.

### **1. Responsibilities of parents and other caregivers**

78. The responsibilities of parents and other caregivers are expressly referred to in several provisions of the Convention. Parents should fulfil their responsibilities while always acting in the best interests of the child, if necessary with the support of the State. Taking the child's evolving capacity into account, parents and caregivers should nurture, protect and support children to grow and develop in a healthy manner. Although not explicit in article 24, paragraph 2 (f), the Committee understands any reference to parents to also include other caregivers.

### **2. Non-State service providers and other non-State actors**

#### **(a) Non-State service providers**

79. All health service providers, including non-State actors, must incorporate and apply to the design, implementation and evaluation of their programmes and services all relevant provisions of the Convention, as well as the criteria of availability, accessibility, acceptability and quality, as described in chapter VI, section E, of the present general comment.

#### **(b) Private sector**

80. All business enterprises have an obligation of due diligence with respect to human rights, which include all rights enshrined under the Convention. States should require businesses to undertake children's rights due diligence. This will ensure that business enterprises identify, prevent and mitigate their negative impact on children's right to health including across their business relationships and within any global operations. Large business enterprises should be encouraged and, where appropriate, required to make public their efforts to address their impact on children's rights.

81. Among other responsibilities and in all contexts, private companies should: refrain from engaging children in hazardous labour while ensuring they comply with the minimum age for child labour; comply with the International Code of Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions; limit advertisement of energy-dense, micronutrient-poor foods, and drinks containing high levels of caffeine or other substances potentially harmful to children; and refrain from the advertisement, marketing and sale to children of tobacco, alcohol and other toxic substances or the use of child images.

82. The Committee acknowledges the profound impact of the pharmaceutical sector on the health of children and calls on pharmaceutical companies to adopt measures towards enhancing access to medicines for children, paying particular attention to the Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines.<sup>19</sup> At the same time, States should ensure that pharmaceutical companies monitor the use, and refrain from promoting excessive prescription and use of, drugs and medicines on children. Intellectual property rights should not be applied in ways that cause necessary medicines or goods to be unaffordable for the poor.

83. Private health insurance companies should ensure that they do not discriminate against pregnant women, children or mothers on any prohibited grounds and that they promote equality through partnerships with State health insurance schemes based on the principle of solidarity and ensuring that inability to pay does not restrict access to services.

**(c) Mass and social media**

84. Article 17 of the Convention delineates the responsibilities of mass media organizations. In the context of health, these can be further expanded to include promoting health and healthy lifestyles among children; providing free advertising space for health promotion; ensuring the privacy and confidentiality of children and adolescents; promoting access to information; not producing communication programmes and material that are harmful to child and general health; and not perpetuating health-related stigma.

**(d) Researchers**

85. The Committee underscores the responsibility of entities, including academics, private companies and others, undertaking research involving children to respect the principles and provisions of the Convention and the International Ethical Guidelines for Biomedical Research Involving Human Subjects.<sup>20</sup> The Committee reminds researchers that the best interests of the child shall always prevail over the interest of general society or scientific advancement.

## V. International cooperation

86. States parties to the Convention have obligations not only to implement children's right to health within their own jurisdiction, but also to contribute to global implementation through international cooperation. Article 24, paragraph 4, requires States and inter-State agencies to pay particular attention to the children's health priorities among the poorest parts of the population and in developing States.

<sup>19</sup> See also Human Rights Council resolution 15/22 on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

<sup>20</sup> Council for International Organizations of Medical Sciences/WHO, Geneva, 1993.

87. The Convention should guide all international activities and programmes of donor and recipient States related directly or indirectly to children's health. It requires partner States to identify the major health problems affecting children, pregnant women and mothers in recipient countries and to address them in accordance with the priorities and principles established by article 24. International cooperation should support State-led health systems and national health plans.

88. States have individual and joint responsibility, including through United Nations mechanisms, to cooperate in providing disaster relief and humanitarian assistance in times of emergency. In these cases, States should consider prioritizing efforts to realize children's right to health, including through appropriate international medical aid; distribution and management of resources, such as safe and potable water, food and medical supplies; and financial aid to the most vulnerable or marginalized children.

89. The Committee reminds States to meet the United Nations target of allocating 0.7 per cent of gross national income to international development assistance, as financial resources have important implications for the realization of children's right to health in resource-limited States. In order to ensure the highest impact, States and inter-State agencies are encouraged to apply the Paris Principles on Aid Effectiveness and the principles of the Accra Agenda for Action.

## **VI. Framework for implementation and accountability**

90. Accountability is at the core of the enjoyment of children's right to health. The Committee reminds the State party of their obligations to ensure that relevant government authorities and service providers are held accountable for maintaining the highest possible standards of children's health and health care until they reach 18 years of age.

91. States should provide an environment that facilitates the discharge of all duty bearers' obligations and responsibilities with respect to children's right to health and a regulatory framework within which all actors should operate and can be monitored, including by mobilizing political and financial support for children's health-related issues and building the capacity of duty bearers to fulfil their obligations and children to claim their right to health.

92. With the active engagement of the Government, parliament, communities, civil society and children, national accountability mechanisms must be effective and transparent and aim to hold all actors responsible for their actions. They should, *inter alia*, devote attention to the structural factors affecting children's health including laws, policies and budgets. Participatory tracking of financial resources and their impact on children's health is essential for State accountability mechanisms.

### **A. Promoting knowledge of children's right to health (art. 42)**

93. The Committee encourages States to adopt and implement a comprehensive strategy to educate children, their caregivers, policymakers, politicians and professionals working with children about children's right to health, and the contributions they can make to its realization.

### **B. Legislative measures**

94. The Convention requires States parties to adopt all appropriate legislative, administrative and other measures for the implementation of children's right to health

without discrimination. National laws should place a statutory obligation on the State to provide the services, programmes, human resources and infrastructure needed to realize children's right to health and provide a statutory entitlement to essential, child sensitive, quality health and related services for pregnant women and children irrespective of their ability to pay. Laws should be reviewed to assess any potential discriminatory effect or impediment to realizing children's right to health and repealed where required. Where necessary, international agencies and donors should provide development aid and technical assistance for such legal reforms.

95. Legislation should fulfil a number of additional functions in the realization of children's right to health by defining the scope of the right and recognizing children as rights-holders; clarifying the roles and responsibilities of all duty bearers; clarifying what services children, pregnant women and mothers are entitled to claim; and regulating services and medications to ensure that they are of good quality and cause no harm. States must ensure that adequate legislative and other safeguards exist to protect and promote the work of human rights defenders working on children's right to health.

### **C. Governance and coordination**

96. States are encouraged to ratify and implement international and regional human rights instruments relevant to children's health and to report on all aspects of children's health accordingly.

97. Sustainability in children's health policy and practice requires a long-term national plan that is supported and entrenched as a national priority. The Committee recommends that States establish and make use of a comprehensive and cohesive national coordinating framework on children's health, built upon the principles of the Convention, to facilitate cooperation between government ministries and different levels of government as well as interaction with civil society stakeholders, including children. Given the high number of government agencies, legislative branches and ministries working on children's health-related policies and services at different levels, the Committee recommends that the roles and responsibilities of each be clarified in the legal and regulatory framework.

98. Particular attention must be given to identifying and prioritizing marginalized and disadvantaged groups of children, as well as children who are at risk of any form of violence and discrimination. All activities should be fully costed, financed and made visible within the national budget.

99. A "child health in all policies" strategy should be used, highlighting the links between children's health and its underlying determinants. Every effort should be made to remove bottlenecks that obstruct transparency, coordination, partnership and accountability in the provision of services affecting children's health.

100. While decentralization is required to meet the particular needs of localities and sectors, this does not reduce the direct responsibility of the central or national Government to fulfil its obligations to all children within its jurisdiction. Decisions about allocations to the various levels of services and geographical areas should reflect the core elements of the approach to primary health care.

101. States should engage all sectors of society, including children, in implementation of children's right to health. The Committee recommends that such engagement include: the creation of conditions conducive to the continual growth, development and sustainability of civil society organizations, including grass-roots and community-level groups; active facilitation of their involvement in the development, implementation and evaluation of children's health policy and services; and provision of appropriate financial support or assistance in obtaining financial support.

### **1. The role of parliaments in national accountability**

102. In children's health-related issues, parliaments have the responsibility to legislate, ensuring transparency and inclusiveness, and encourage continued public debate and a culture of accountability. They should create a public platform for reporting and debating performance and promoting public participation in independent review mechanisms. They should also hold the executive accountable for implementing the recommendations emerging from independent reviews and ensure that the results of the reviews inform subsequent national plans, laws, policies, budgets and further accountability measures.

### **2. The role of national human rights institutions in national accountability**

103. National human rights institutions have an important role to play in reviewing and promoting accountability, providing children with relief for violations of their right to health and advocating systemic change for the realization of that right. The Committee recalls its general comment No. 2, and reminds States that the mandate of children's commissioners or children's ombudsmen should include ensuring the right to health, and the mandate holders should be well-resourced and independent from the Government.<sup>21</sup>

## **D. Investing in children's health**

104. In their decisions about budget allocation and spending, States should strive to ensure availability, accessibility, acceptability and quality of essential children's health services for all, without discrimination.

105. States should continually assess the impact of macroeconomic policy decisions on children's right to health, particularly children in vulnerable situations, prevent any decisions that may compromise children's rights, and apply the "best interests" principle when making such decisions. States should also consider obligations under article 24 in all aspects of their negotiations with international financial institutions and other donors, to ensure that children's right to health is given adequate consideration in international cooperation.

106. The Committee recommends that States parties:

(a) Legislate for a specific proportion of public expenditure to be allocated to children's health and create an accompanying mechanism that allows for systematic independent evaluation of this expenditure;

(b) Meet World Health Organization-recommended minimum health expenditure per capita and prioritize children's health in budgetary allocations;

(c) Make investment in children visible in the State budget through detailed compilation of resources allocated to them and expended; and

(d) Implement rights-based budget monitoring and analysis, as well as child impact assessments on how investments, particularly in the health sector, may serve the best interests of the child.

107. The Committee underlines the importance of assessment tools in the use of resources and recognizes the need to develop measurable indicators to assist States parties in monitoring and evaluating progress in the implementation of children's right to health.

<sup>21</sup> See general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41)*, annex VIII.

## E. The action cycle

108. States parties' fulfilment of their obligations under article 24 requires engagement in a cyclical process of planning, implementation, monitoring and evaluation to then inform further planning, modified implementation and renewed monitoring and evaluation efforts. States should ensure the meaningful participation of children and incorporate feedback mechanisms to facilitate necessary adjustments throughout the cycle.

109. At the heart of the development, implementation and monitoring of policies, programmes and services that aim to realize children's right to health is the availability of relevant and reliable data. This should include: appropriately disaggregated data across the life course of the child, with due attention to vulnerable groups; data on priority health problems, including new and neglected causes of mortality and morbidity; and data on the key determinants of children's health. Strategic information requires data collected through routine health information systems, special surveys and research, and should include both quantitative and qualitative data. These data should be collected, analysed, disseminated and used to inform national and subnational policies and programmes.

### 1. Planning

110. The Committee notes that, in order to inform the implementation, monitoring and evaluation of activities to fulfil obligations under article 24, States should carry out situation analyses of existing problems, issues and infrastructure for delivery of services. The analysis should assess the institutional capacity and the availability of human, financial, and technical resources. Based on the outcome of the analysis, a strategy should be developed involving all stakeholders, both State and non-State actors and children.

111. The situation analysis will provide a clear idea of national and subnational priorities and strategies for their achievement. Benchmarks and targets, budgeted action plans and operational strategies should be established along with a framework for monitoring and evaluating policies, programmes and services and promoting accountability for children's health. This will highlight how to build and strengthen existing structures and systems to be consonant with the Convention.

### 2. Criteria for performance and implementation

112. States should ensure that all children's health services and programmes comply with the criteria of availability, accessibility, acceptability and quality.

#### (a) Availability

113. States should ensure that there are functioning children's health facilities, goods, services and programmes in sufficient quantity. States need to ensure that they have sufficient hospitals, clinics, health practitioners, mobile teams and facilities, community health workers, equipment and essential drugs to provide health care to all children, pregnant women and mothers within the State. Sufficiency should be measured according to need with particular attention given to under-served and hard to reach populations.

#### (b) Accessibility

114. The element of accessibility has four dimensions:

(a) *Non-discrimination*: Health and related services as well as equipment and supplies must be accessible to all children, pregnant women and mothers, in law and in practice, without discrimination of any kind;

(b) *Physical accessibility*: Health facilities must be within accessible distance for all children, pregnant women and mothers. Physical accessibility may require additional attention to the needs of children and women with disabilities. The Committee encourages States to prioritize the establishment of facilities and services in under-served areas and to invest in mobile outreach approaches, innovative technologies, and well-trained and supported community health workers, as ways of reaching especially vulnerable groups of children;

(c) *Economic accessibility/affordability*: Lack of ability to pay for services, supplies or medicines should not result in the denial of access. The Committee calls on States to abolish user fees and implement health-financing systems that do not discriminate against women and children on the basis of their inability to pay. Risk-pooling mechanisms such as tax and insurance should be implemented on the basis of equitable, means-based contributions;

(d) *Information accessibility*: Information on health promotion, health status and treatment options should be provided to children and their caregivers in a language and format that is accessible and clearly understandable to them.

**(c) Acceptability**

115. In the context of children's right to health, the Committee defines acceptability as the obligation to design and implement all health-related facilities, goods and services in a way that takes full account of and is respectful of medical ethics as well as children's needs, expectations, cultures, views and languages, paying special attention to certain groups, where necessary.

**(d) Quality**

116. Health-related facilities, goods and services should be scientifically and medically appropriate and of good quality. Ensuring quality requires, inter alia, that (a) treatments, interventions and medicines are based on the best available evidence; (b) medical personnel are skilled and provided with adequate training on maternal and children's health, and the principles and provisions of the Convention; (c) hospital equipment is scientifically approved and appropriate for children; (d) drugs are scientifically approved, have not expired, are child-specific (when necessary) and are monitored for adverse reactions; and (e) regular quality of care assessments of health institutions are conducted.

**3. Monitoring and evaluation**

117. A well-structured and appropriately disaggregated set of indicators should be established for monitoring and evaluation to meet the requirements under the performance criteria above. The data should be used to redesign and improve policies, programmes and services in support of fulfilment of children's right to health. Health information systems should ensure that data should be reliable, transparent, and consistent, while protecting the right to privacy for individuals. States should regularly review their health information system, including vital registration and disease surveillance, with a view to its improvement.

118. National accountability mechanisms should monitor, review and act on their findings. Monitoring means providing data on the health status of children, regularly reviewing the quality of children's health services and how much is spent thereon and where, on what and on whom it is spent. This should include both routine monitoring and periodic, in-depth evaluations. Reviewing means analysing the data and consulting children, families, other caregivers and civil society to determine whether children's health has improved and whether Governments and other actors have fulfilled their commitments.

Acting means using evidence emerging from these processes to repeat and expand what is working and to remedy and reform what is not.

#### **F. Remedies for violations of the right to health**

119. The Committee strongly encourages States to put in place functional and accessible complaints mechanisms for children that are community-based and render it possible for children to seek and obtain reparations when their right to health is violated or at risk. States should also provide for broad rights of legal standing, including class actions.

120. States should ensure and facilitate access to courts for individual children and their caregivers and take steps to remove any barriers to access remedies for violations of children's right to health. National human rights institutions, children's ombudspersons, health-related professional associations and consumers' associations can play an important role in this regard.

#### **VII. Dissemination**

121. The Committee recommends that States widely disseminate the present general comment with parliament and across Government, including within ministries, departments and municipal and local-level bodies working on children's health issues.

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Agenda items 2 and 3

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General****Promotion and protection of all human rights, civil  
political, economic, social and cultural rights,  
including the right to development****Analytical study on the relationship between climate change  
and the full and effective enjoyment of the rights of the child****Report of the Office of the United Nations High Commissioner for  
Human Rights***Summary*

The present analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child is submitted pursuant to Human Rights Council resolution 32/33. In the study, the Office of the United Nations High Commissioner for Human Rights examines the impacts of climate change on children and the related human rights obligations and responsibilities of States and other actors, including the elements of a child rights-based approach to climate change policies. The study provides examples of good practices and concludes with several recommendations.

This is Exhibit "G" referred to in the Affidavit of  
Katherine Vandergriff, sworn before me at  
Ottawa this

*the* 28 day of November, 2018.

*[Signature]*  
A Commissioner for taking Affidavits within

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## I. Introduction

1. The present study is submitted pursuant to Human Rights Council resolution 32/33, in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to conduct a detailed analytical study, in consultation with relevant stakeholders, on the relationship between climate change and the full and effective enjoyment of the rights of the child.

2. On 9 September 2016, OHCHR circulated a note verbale and questionnaire to Member States requesting inputs for the study. Communications were also sent to other stakeholders, including international organizations, national human rights institutions and civil society. Their inputs were summarized in a conference room paper prepared by OHCHR in advance of the panel discussion on the adverse impact of climate change on States' efforts to realize the rights of the child and related policies, lessons learned and good practices, held on 2 March 2017.<sup>1</sup> The panel discussion, written inputs, consultations and independent research have informed the present study.

3. In the study, OHCHR examines the impacts of climate change on children and the related human rights obligations and responsibilities of States and other actors, including the elements of a child rights-based approach to climate change policies. It provides examples of good practices and concludes with concrete recommendations for fulfilling human rights obligations, particularly those related to children's rights, in the context of climate change.

## II. Key impacts of climate change on children

4. Children are disproportionately affected by changes in their environment, due to their unique metabolism, physiology and developmental needs.<sup>2</sup> Changes in temperature, air and water quality and nutrition are likely to have more severe and long-term impacts on children's health, development and well-being. Young children, because of their less developed physiology and immune systems, will experience most intensely the effects of climate change-related stresses.<sup>3</sup> During childhood, alterations to the social and physical environment can have far-reaching implications for children's long-term physical and mental health and overall quality of life.

5. According to United Nations Children's Fund (UNICEF), there may be no greater threat facing the world's children, and future generations, than climate change.<sup>4</sup> In 2014, there were 2.2 billion children in the world, with approximately 30 per cent of the world's population being under 18 years old.<sup>5</sup> Existing and future demographic trends reveal that many of the countries that have been identified as highly vulnerable to climate change also have higher proportions of children in their overall population. These include parts of South Asia, the Pacific islands and other small island developing States, equatorial Africa and the Pacific coast of South America.

6. As discussed below, some of the most substantial impacts of climate change on children are caused by extreme weather and natural disasters, water scarcity and food insecurity, air pollution and vector-borne diseases and resulting psychological trauma. Children in vulnerable situations are disproportionately affected by climate change.

<sup>1</sup> For the summary of the panel discussion, see A/HRC/35/14. The original inputs received and the informal summary of those inputs are available at [www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/RightsChild.aspx](http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/RightsChild.aspx).

<sup>2</sup> See generally World Health Organization (WHO), *Inheriting a Sustainable World? Atlas on Children's Health and the Environment* (2017), available at [www.who.int/ceh/publications/inheriting-a-sustainable-world/en/](http://www.who.int/ceh/publications/inheriting-a-sustainable-world/en/).

<sup>3</sup> P.J. Landrigan and A. Garg, "Children are not little adults", in *Children's Health and the Environment: A Global Perspective*, J. Pronczuk-Garbino, ed. (Geneva, WHO, 2005).

<sup>4</sup> UNICEF, *Unless We Act Now: The Impact of Climate Change on Children* (New York, 2015), p. 6.

<sup>5</sup> UNICEF, *The State of the World's Children 2014: Every Child Counts* (New York, 2014).

## A. Extreme weather and natural disasters

7. Climate change contributes to the increasing frequency and intensity of extreme weather events. Globally, nearly 160 million children have been identified as living in areas of high or extremely high drought severity.<sup>6</sup> More than half a billion children live in zones of extremely high flood occurrence, and approximately 115 million children live in zones of high or extremely high tropical cyclone risk.<sup>7</sup> Even under a medium-low emission scenario, the Intergovernmental Panel on Climate Change predicts a global sea-level rise of 0.53 metres by 2100, with coastal and low-lying areas at risk of submergence, flood damage, erosion and impeded drainage.<sup>8</sup> Floods and other natural disasters caused by extreme weather are likely to elevate mortality and morbidity among children.

8. Young children are more susceptible to injury and death during natural disasters. In the aftermath of the 2010 floods in Pakistan, rates of under-5 mortality in flood-affected areas were notably higher than the national average.<sup>9</sup> Natural disasters can also result in the separation of children from their family unit, increasing their vulnerability to subsequent harm.

9. Climate change is also expected to increase the duration and intensity of heat waves. This will affect children disproportionately, as their bodies adapt at a slower rate to changes in heat and they may suffer from heat rash, heat-related cramps, exhaustion, renal disease, respiratory illness, stroke and death.<sup>10</sup>

10. Extreme weather events can disrupt access to essential educational, health and housing services. For example, children's access to education can be interrupted by damage to educational facilities and critical infrastructure and by the use of schools as emergency shelters.<sup>11</sup> Similarly, damage to health infrastructure and essential drug supplies can make post-emergency interventions less effective. Floods and landslides, sea-level rise and powerful storms can degrade and destroy housing units and water and sanitation infrastructure, worsening living conditions, particularly for children, in unplanned and underserved settlements.<sup>12</sup>

11. Climate change-related disasters can also disrupt child protection systems and exacerbate pre-existing tensions and conflicts, leaving children susceptible to abuse, child labour, trafficking and other forms of exploitation.<sup>13</sup>

## B. Water scarcity and food insecurity

12. Climate change is already affecting water and food supplies, with severe consequences for children in poor communities. Changing patterns of precipitation, sea-level rise and increased evaporation as a result of climate change will reduce surface and

<sup>6</sup> UNICEF, *Unless We Act Now*.

<sup>7</sup> *Ibid.*

<sup>8</sup> Christopher B. Field and others, eds., *Climate Change 2014: Impacts, Adaptation and Vulnerability*, Working Group II contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (New York, Cambridge University Press, 2014), pp. 368-369.

<sup>9</sup> UNICEF, *Unless We Act Now*, p. 30; see also WHO, "Pakistan floods 2010: early recovery plan for the health sector" (2011), p. 52.

<sup>10</sup> See, for example, Johns Hopkins Medicine, "Heat-related illnesses (heat cramps, heat exhaustion, heat stroke)", available from [www.hopkinsmedicine.org/healthlibrary/conditions/pediatrics/heat-related\\_illnesses\\_heat\\_cramps\\_heat\\_exhaustion\\_heat\\_stroke\\_90,P01611/](http://www.hopkinsmedicine.org/healthlibrary/conditions/pediatrics/heat-related_illnesses_heat_cramps_heat_exhaustion_heat_stroke_90,P01611/).

<sup>11</sup> Katie Harris and Kelly Hawrylyshyn, "Climate extremes and child rights in South Asia: a neglected priority" (Overseas Development Institute, 2012).

<sup>12</sup> See generally A/64/255 on climate change and the right to adequate housing, para. 21 on the disproportionate impacts on children.

<sup>13</sup> Sheridan Bartlett, "Climate change and urban children: impacts and implications for adaptation in low- and middle-income countries", *Environment and Urbanization*, vol. 20, No. 2 (October 2008), pp. 509-510; Global Protection Cluster, "Strengthening protection in natural disaster response: children", available at [www.globalprotectioncluster.org/en/tools-and-guidance/essential-protection-guidance-and-tools/protection-in-natural-disasters-essential-guidance-and-tools.html](http://www.globalprotectioncluster.org/en/tools-and-guidance/essential-protection-guidance-and-tools/protection-in-natural-disasters-essential-guidance-and-tools.html).

groundwater resources in most dry subtropical regions.<sup>14</sup> Droughts are expected to intensify, reducing access to water for personal consumption, agriculture and economic activities. Acidification and increasing water temperatures further threaten the fisheries upon which many coastal communities rely for subsistence.

13. Shortages of safe drinking water and food staples will have disproportionate impacts on children, particularly the poor. Children's consumption needs per body weight are higher than those of adults and food and water scarcity undermines their physical and cognitive growth.<sup>15</sup> Globally, undernutrition is responsible for nearly half of all under-5 deaths and is a major factor exacerbating the frequency and severity of other diseases and infections.<sup>16</sup> Inadequate responses to malnourishment during the first two years of life result in irreversible stunting with lifelong consequences for children's cognitive capacity, school performance and economic productivity.<sup>17</sup> It is estimated that, by 2030, climate change will result in an additional 7.5 million children under the age of 5 who are moderately or severely stunted.<sup>18</sup>

14. Food and water crises pose additional risks, such as increased incidences of school dropout, child labour and domestic violence. Crop and income loss has been linked to significant increases in the level of child labour used for household chores such as fetching water and searching for firewood.<sup>19</sup> When extreme weather affects the security of household incomes and families increase their reliance on child labour, children have less time and energy to dedicate to school activities.

### C. Air pollution

15. In 2012, indoor and outdoor air pollution combined were linked to approximately 700,000 deaths among children under 5 years of age.<sup>20</sup> Although air pollution is not caused by climate change, some forms of air pollution cause climate change. Further, climate change can exacerbate some forms of air pollution, for example, by intensifying the toxicity of pollutants, such as ozone, a trigger of childhood asthma.<sup>21</sup> The heightened risk of wildfires associated with heat waves and drought affects air quality and children's respiratory systems, and warmer temperatures are also linked with the release of airborne allergens that can exacerbate asthma and allergic respiratory diseases.<sup>22</sup> Thus, air pollution and climate change contribute to a vicious cycle that disproportionately affects children, who, due to their higher breathing rate, are more susceptible to respiratory problems and infections related to air pollution.<sup>23</sup>

### D. Vector-borne and infectious diseases

16. Children are more susceptible than adults to many vector-borne and infectious diseases. Waterborne diseases typically spread in the aftermath of climate change-related floods and storms, especially when water and sanitation infrastructure is damaged. Poor hygiene and consumption of contaminated water can contribute to increased incidence of diarrhoea and cholera, among other illnesses. Diarrhoea is the second leading cause of

<sup>14</sup> Field and others, *Climate Change 2014*, p. 232.

<sup>15</sup> Landrigan and Garg, "Children", pp. 3-4.

<sup>16</sup> UNICEF, "Undernutrition contributes to nearly half of all deaths in children under 5 and is widespread in Asia and Africa", available at <https://data.unicef.org/topic/nutrition/malnutrition/>.

<sup>17</sup> Cesar G. Victora, and others, "Maternal and child undernutrition: consequences for adult health and human capital", *Lancet*, vol. 371, No. 9609 (2008).

<sup>18</sup> WHO, *Quantitative Risk Assessment of the Effects of Climate Change on Selected Causes of Death, 2030s and 2050s* (Geneva, 2014), p. 80.

<sup>19</sup> Kathleen Beegle, Rajeev H. Dehejia and Roberta Gatti, "Child labor and agricultural shocks", *Journal of Development Economics*, vol. 81, No. 1 (October 2006).

<sup>20</sup> WHO, *Inheriting a Sustainable World?*, p. 16.

<sup>21</sup> UNICEF, *Unless We Act Now*, p. 44.

<sup>22</sup> Field and others, *Climate Change 2014*, p. 729.

<sup>23</sup> Landrigan and Garg, "Children".

mortality in children under 5.<sup>24</sup> By 2030, it is projected that climate change impacts will result in 48,000 additional deaths from diarrhoeal disease in children under 15.<sup>25</sup>

17. Climate change is also likely to expand the seasonal and geographic range of vector-borne diseases, including insect-borne diseases with hosts sensitive to variations in temperature, humidity and precipitation. Malaria is expected to expand into tropical highland regions where the medical and immunological responses of populations may be ill-equipped to cope.<sup>26</sup> Infants and young and poor children living in areas with substandard health facilities are at particular risk. In 2015, roughly 300,000 children under the age of 5 died from malaria;<sup>27</sup> the majority lived on the African continent. Outbreaks of other diseases that affect children, such as dengue, Zika, leptospirosis, viral infections, meningitis, varicella, viral hepatitis, leishmaniasis and pertussis, have been linked to climate change.<sup>28</sup>

## E. Impacts on mental health

18. Climate change and the impacts of traumatic stress connected to climate change, such as war/insecurity, sexual and physical violence and witnessing deaths and injury related to extreme weather disasters, negatively affect children's mental health. Children who lose a family member or experience life-threatening situations as a result of the impacts of climate change have a higher chance of experiencing post-traumatic stress, anxiety disorders, suicidal ideation and depression. Disasters can also affect children's cognitive capacity with corresponding impacts on their emotional well-being. For example, children affected by El Niño during early childhood posted lower scores in language development, memory and spatial reasoning than other children of a similar age.<sup>29</sup> Lower cognitive functioning in early life has been shown to increase the risk of future mental health problems.<sup>30</sup>

19. Children may also experience anxiety related to fear of separation from their families and heightened household tensions resulting from the loss of family livelihoods.<sup>31</sup> Children whose families are affected by climate change may be exposed to higher risks of violence, physical abuse, child labour, trafficking and exploitation. Their needs for rest and play may be subordinated to basic survival interests. In cases of displacement, separation from traditional lands and territories, from communities and from family members can have impacts on children's education, cultural identity and access to social support systems. All of these climate impacts have potentially severe mental health repercussions.

## F. Disproportionate impacts on children in vulnerable situations

20. According to the Intergovernmental Panel on Climate Change, "people who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses".<sup>32</sup> The negative impacts of climate change will disproportionately affect poor children, indigenous children, minorities, migrants and other children on the move, children

<sup>24</sup> WHO, "Diarrhoeal disease", Fact sheet No. 330 (2013), available from [www.who.int/mediacentre/factsheets/fs330/en/](http://www.who.int/mediacentre/factsheets/fs330/en/).

<sup>25</sup> WHO, *Quantitative Risk*, p. 44.

<sup>26</sup> UNICEF, *Unless We Act Now*, p. 48.

<sup>27</sup> WHO, "Malaria in children under 5" (2016), available at [www.who.int/malaria/areas/high\\_risk\\_groups/children/en/](http://www.who.int/malaria/areas/high_risk_groups/children/en/).

<sup>28</sup> A/HRC/32/23.

<sup>29</sup> Arturo Aguilar and Marta Vicarelli, "El Niño and Mexican children: medium-term effects of early-life weather shocks on cognitive and health outcomes" (2011).

<sup>30</sup> Chuan Yu Chen and others, "Mild cognitive impairment in early life and mental health problems in adulthood", *American Journal of Public Health*, vol. 96, No. 10 (October 2006).

<sup>31</sup> Agnes A. Babugara, "Vulnerability of children and youth in drought disasters: a case study of Botswana", *Children, Youth and Environments*, vol. 18, No. 1 (2008).

<sup>32</sup> Field and others, *Climate Change 2014*, p. 50.

with disabilities and others in vulnerable situations. Girls also face heightened risks due to climate change. Additionally, disproportionate impacts will be felt by children living in developing countries, particularly those in geographically vulnerable areas, such as riparian and low-lying coastal areas, arid regions, high mountains, polar zones and other delicate ecosystems. The following sections contain illustrative examples of the disproportionate impacts of climate change on girls, indigenous children, children with disabilities and children on the move.

## 1. Girls and pregnant women

21. Girls are more likely to be pulled from school to perform household chores, such as eldercare, fetching water and cooking, when households are affected by climate change stresses.<sup>33</sup> To counteract the effects of climate change on livelihoods, girls may sometimes be sold into child marriage, trafficked or forced to work, with resulting impacts on their education, health, liberty and security. Evidence also suggests that food insecurity associated with climate change disproportionately affects girls.<sup>34</sup>

22. Situations of crisis can exacerbate gender inequalities, affecting girls more and differently. Gender inequalities have been linked to higher rates of mortality from natural disasters among women and girls.<sup>35</sup> In post-disaster settings, pregnant women, with their distinct needs for maternal health care, food, water, sanitation and hygiene, face unique health risks. Exposure to extreme temperatures, infection with water- and vector-borne diseases and post-disaster emotional distress during pregnancy have been associated with negative impacts on pregnancy outcomes, including miscarriage, premature birth and anaemia.<sup>36</sup> Girls' security and bodily integrity can also be threatened by climate change-related displacement. Evacuation to shelters lacking safe facilities for girls has been documented to heighten risks of all forms of sexual harassment and violence, including human trafficking. This can result in higher rates of forced girl pregnancies and forced marriages.<sup>37</sup>

## 2. Indigenous children

23. Many indigenous peoples rely upon climate-sensitive ecosystems for livelihoods as well as spiritual and cultural practices. Therefore, they are particularly threatened by the degradation of land, water and biodiversity. For example, the traditional livelihoods of indigenous peoples in the Arctic have been adversely affected by rising temperatures.<sup>38</sup> Many indigenous children live in impoverished communities which affects their capacity for climate adaptation. Indigenous peoples constitute approximately 15 per cent of the world's poor and one third of the 900 million people living in extreme poverty in rural areas.<sup>39</sup> Indigenous children may also be negatively affected by actions taken to mitigate climate change, such as projects related to the production of biofuel or hydroelectric power, which have sometimes resulted in the displacement of entire indigenous communities without their free, prior and informed consent.<sup>40</sup>

<sup>33</sup> Global Gender and Climate Alliance, *Gender and Climate Change: A Closer Look at Existing Evidence* (2016), pp. 17-18.

<sup>34</sup> *Ibid.*, p. 25.

<sup>35</sup> Eric Neumayer and Thomas Plümper, "The gendered nature of natural disasters: the impact of catastrophic events on the gender gap in life expectancy, 1981-2002", *Annals of the Association of American Geographers*, vol. 97, No. 3 (2007).

<sup>36</sup> Global Gender and Climate Alliance, *Gender and Climate Change*, p. 29.

<sup>37</sup> Anita Swarup and others, *Weathering the Storm: Adolescent Girls and Climate Change* (Plan International, 2011), available at [www.ungei.org/files/weatherTheStorm.pdf](http://www.ungei.org/files/weatherTheStorm.pdf); and Claudia Felton-Bierman, "Gender and natural disaster: sexualized violence and the tsunami", *Development*, vol. 49, No. 3 (September 2006).

<sup>38</sup> Field and others, *Climate Change 2014*, p. 1583.

<sup>39</sup> Department of Economic and Social Affairs, *State of the World's Indigenous Peoples* (New York, United Nations, 2009), p. 21.

<sup>40</sup> United Nations Environment Programme, *Climate Change and Human Rights* (Nairobi, 2015), pp. 8-9.

### 3. Children with disabilities

24. The negative impacts of climate change can exacerbate inequities already experienced by children with disabilities. The Convention on the Rights of Persons with Disabilities highlights that the majority of persons with disabilities live in conditions of poverty. Children with disabilities may experience social and economic exclusion, be left out of decision-making processes and have difficulty accessing social services. They are more likely to live in poverty and to experience physical abuse, while at the same time enjoying less access to educational and medical services.<sup>41</sup> These factors can contribute to the disproportionate impact of climate change on children with disabilities. The negative impacts of climate change on children can also lead to an increased risk of health-related disabilities.

25. In emergencies, children with disabilities may suffer higher rates of abuse, neglect and abandonment.<sup>42</sup> Insufficient accessibility considerations in evacuation, response and relief efforts caused by the exclusion of disability issues from disaster planning renders children with disabilities particularly susceptible to injuries and diseases.<sup>43</sup> Barriers to access to food, drinking water and medical relief in the aftermath of disasters can affect health and exacerbate the effects of children's disabilities.<sup>44</sup>

### 4. Children on the move

26. Climate change is increasingly recognized as a key driver of human movement. In the most extreme cases, all inhabitants of some small island States and low-lying coastal areas may need to be relocated. An estimated 22.5 million people per year for the seven years leading up to 2015 have already been displaced by climate- or weather-related disasters.<sup>45</sup> These disasters are expected to increase in both frequency and intensity with further climate change.

27. When sudden or slow-onset disasters result in large-scale human movement, children may be separated from their cultural heritage and face barriers in access to schools, adequate health-care facilities and other necessary goods and services. Overcrowded shelters with inadequate sanitation and access to clean water can increase the transmission of diarrhoea and malnutrition rates, both leading causes of child mortality.<sup>46</sup> Inadequate security and protection in some shelters can expose children to abuse and violence. Children travelling alone or separated from their parents can be particularly at risk of emotional, physical and sexual violence.<sup>47</sup>

## III. Human rights obligations and responsibilities of States and other actors

28. The Convention on the Rights of the Child states that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Children's rights are inalienable and universal human rights entitlements enshrined in the Convention, which is the most widely ratified human rights instrument in the world. These rights are also reflected in treaties such

<sup>41</sup> UNICEF, *State of the World's Children 2013: Children with Disabilities* (New York, 2013), available at [www.unicef.org/sowc2013/files/SWCR2013\\_ENG\\_Lo\\_res\\_24\\_Apr\\_2013.pdf](http://www.unicef.org/sowc2013/files/SWCR2013_ENG_Lo_res_24_Apr_2013.pdf).

<sup>42</sup> A/HRC/31/30.

<sup>43</sup> Global Partnership for Disability and Development and World Bank, "The impact of climate change on people with disabilities" (2009).

<sup>44</sup> WHO, "Disasters, disability and rehabilitation" (2005), available at [www.who.int/violence\\_injury\\_prevention/other\\_injury/disaster\\_disability2.pdf](http://www.who.int/violence_injury_prevention/other_injury/disaster_disability2.pdf).

<sup>45</sup> Internal Displacement Monitoring Center, *Global Estimates 2015: People Displaced by Disasters*, p. 8 (Geneva, 2015).

<sup>46</sup> UNICEF and WHO, *Diarrhoea: Why Children Are Still Dying and What Can Be Done* (Geneva, 2009), available at [http://apps.who.int/iris/bitstream/10665/44174/1/9789241598415\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/44174/1/9789241598415_eng.pdf).

<sup>47</sup> UNICEF, *The Challenges of Climate Change: Children on the Front Line* (Innocenti Insight, Florence, 2014), pp. 29-32.

as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. All States are obligated to respect, promote, protect and fulfil a set of interrelated and indivisible civil, political, economic, social and cultural rights for all children without discrimination.

29. The impacts of climate change outlined in the preceding section clearly undermine the effective enjoyment of the rights enshrined in the Convention on the Rights of the Child, including the rights to life, survival and development (art. 6), family relations and not to be separated from one's parents against one's will (arts. 9-10), the highest attainable standard of health (art. 24), adequate standard of living (art. 27), education (art. 28), freedom from any form of violence or exploitation (arts. 19, 32 and 34-36), recreation and play (art. 31) and the enjoyment of one's culture (art. 30).<sup>48</sup> The Committee on the Rights of the Child has identified climate change as one of the biggest threats to children's health and has urged States parties to put children's health concerns at the centre of their climate change adaptation and mitigation strategies.<sup>49</sup> It has emphasized that States have a responsibility to protect children from environmental harms.

30. The negative impacts of climate change on children trigger obligations among all duty bearers to take action to protect all children from its actual and foreseeable adverse effects.<sup>50</sup> The importance of children's rights in the context of climate change is explicitly recognized in the Paris Agreement under the United Nations Framework Convention on Climate Change, in which States are called on to respect, promote and consider their respective obligations on, among other things, the rights of the child and intergenerational equity when taking action to address climate change.

31. The core human rights obligations of States and other duty bearers in the context of climate change are outlined in the key messages on human rights and climate change of OHCHR.<sup>51</sup> These obligations require States to take a human rights-based approach to protect those most vulnerable to climate change from its worst impacts. The 2030 Agenda for Sustainable Development, the Paris Agreement, the Sendai Framework for Disaster Risk Reduction 2015-2030 and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development all reaffirm State commitments to a human rights-based approach to development and climate action. A human rights-based approach analyses obligations, inequalities and vulnerabilities and seeks to redress discriminatory practices and unjust distributions of power.<sup>52</sup> A child rights-based approach to climate change mitigation and adaptation builds upon the essential attributes of human rights-based approaches while incorporating the specificities of children's rights, needs and capacities.

32. The Committee on the Rights of the Child has identified four general principles of a child rights-based approach: non-discrimination, the best interests of the child, the child's right to life, survival and development and the child's right to express his or her views.<sup>53</sup> A child rights-based approach to climate change should take into account the following:

(a) As climate policies and programmes are formulated, the main objective should be to fulfil human rights, taking into account the specific risks faced by children, their unique developmental needs, identification of their best interests and incorporation of their views, in accordance with their evolving capacities;

(b) Children's participation in relevant decision-making processes, including those related to climate adaptation and mitigation policies, must be ensured;

<sup>48</sup> See CRC/C/JAM/CO/3-4, para. 50, CRC/C/LCA/CO/2-4, para. 52, CRC/C/TUV/CO/1, paras. 7 and 55.

<sup>49</sup> General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 50.

<sup>50</sup> See, for example, A/HRC/32/23 and A/HRC/31/52.

<sup>51</sup> See A/HRC/33/31, annex II.

<sup>52</sup> See <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>.

<sup>53</sup> See general comment No. 5 (2003) on general measures of implementation of the Convention, para. 12.

(c) The obligations and responsibilities of duty bearers, such as States and private actors, must be clarified;

(d) Principles and standards derived from international human rights law, especially the Universal Declaration of Human Rights and the core universal human rights treaties, should guide all policies and programming.

33. A child rights-based approach requires States to take urgent action to mitigate climate change by limiting emissions of greenhouse gases in order to prevent to the greatest extent possible their negative human rights impacts on children and future generations. Protection of children's rights requires stopping development of the most carbon-intensive fossil fuels and transitioning to clean, renewable sources of energy. States also must take adaptation measures to protect and fulfil the rights of all children, and indeed all persons, particularly those most endangered by the negative impacts of climate change. All efforts to mitigate and adapt to climate change should be guided by relevant human rights norms, standards and principles, including those related to participation, access to information, transparency, accountability, equity, non-discrimination and equality.

34. In the United Nations Framework Convention on Climate Change and the Paris Agreement under that Convention, States are called on to take action on climate change on the basis of equity and in accordance with their common but differentiated responsibilities, while the Rio Declaration on Environment and Development and the Vienna Declaration and Programme of Action call for the right to development to be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. These commitments are reaffirmed in the 2030 Agenda for Sustainable Development, in which a just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met and development that benefits current and future generations are envisioned.

35. The principle of intergenerational equity underlying these frameworks places a duty on current generations to act as responsible stewards of the planet and ensure the rights of future generations to meet their developmental and environmental needs. This principle has been applied by the Committee on Economic, Social and Cultural Rights, which directed States to adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations.<sup>54</sup> States also have a moral and ethical obligation to place the needs of today's children and of future generations at the core of climate change policies and actions.

36. The human rights obligations of States require both individual action and international cooperation. States, acting individually and collectively, are obligated to mobilize and allocate the maximum available resources for the progressive realization of economic, social and cultural rights, as well as for the advancement of civil and political rights and the right to development. Equitable climate action requires that the burden of addressing and preventing the adverse effects of climate change is shared, taking into consideration the common but differentiated responsibilities of States. This means that those developed countries that have contributed the most to climate change should cooperate, including through the mobilization of finance and the transfer of technology and knowledge, to strengthen climate mitigation and adaptation capacity in those developing countries that have contributed the least. Particular attention should be paid to protecting children from the adverse effects of climate change.

37. Actors other than States also bear responsibility for climate change harm. The Guiding Principles on Business and Human Rights affirm that States have an obligation to protect human rights from business harm, while private enterprises have a responsibility to respect human rights and do no harm.<sup>55</sup> The Committee on the Rights of the Child has called on States to protect children's rights from harm caused by business enterprises, through the adoption of mandatory requirements for children's rights due diligence by

<sup>54</sup> See general comment No. 15 (2002) on the right to water, para. 28.

<sup>55</sup> See also UNICEF, The Global Compact and Save the Children, *Children's Rights and Business Principles*, available at <http://childrenandbusiness.org/>.

businesses.<sup>56</sup> States should also ensure children's access to effective redress mechanisms for violations of their rights by businesses, including through the exercise of extraterritorial jurisdiction as appropriate.<sup>57</sup>

38. States are obligated to provide effective and timely remedies for climate change-related harm, including for harm caused by climate mitigation and adaptation projects. Article 2 (3) of the International Covenant on Civil and Political Rights guarantees all persons, including children, the right to an effective remedy for violations of human rights. The Committee on the Rights of the Child stresses that in cases of violations of children's rights, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration.<sup>58</sup> Article 12 (2) of the Convention on the Rights of the Child establishes that children are to be provided the opportunity to be heard in any judicial or administrative proceedings affecting them, either directly, or through a representative or an appropriate body. Children's special and dependent status, their frequent absence of legal standing, power imbalances and lack of knowledge, including with regard to climate change, can impair their access to remedies. States are obligated to take appropriate steps to empower children and ensure their access to child-sensitive judicial and administrative processes.

39. The Convention on the Rights of the Child recognizes children's rights to seek and impart information and to have access to an education that fosters respect for the environment and the development of relevant life skills and knowledge.<sup>59</sup> Under article 6 of the United Nations Framework Convention on Climate Change, States parties are required to promote and facilitate public access to information on climate change and its effects. A child rights-based approach to climate action requires States to provide adequate, child-accessible and timely information about climate impacts, risks and hazards. States should conduct and disclose environmental and children's rights impact assessments and ensure an adequate education related to environmental issues in order to inform children's participation in climate decision-making. Education and access to information empower children and other actors, such as health professionals and policymakers, to advocate for children's rights.

40. All children are entitled to participate, according to their age and maturity, in all decisions that have a direct and indirect impact upon their well-being. Under article 12 of the Convention on the Rights of the Child, States are required to create an enabling environment where children can freely express their views and have them given due consideration. In the 2030 Agenda for Sustainable Development children, together with young women and men, are recognized as critical agents of change who can channel their infinite capacities for activism into the creation of a better world.<sup>60</sup> Under article 6 of the United Nations Framework Convention on Climate Change, States are directed to promote and facilitate public participation in addressing climate change and its effects and developing adequate responses. A child rights-based approach to climate change requires that children should not be treated as passive victims of events beyond their influence, but rather as agents of change whose preferences and choices are fairly reflected in policy design and implementation. Ensuring children's education and participation as called for in the 2030 Agenda will be critical to fulfilling this objective.

<sup>56</sup> General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights.

<sup>57</sup> *Ibid.*, para. 44.

<sup>58</sup> Committee on the Rights of the Child, general comment No. 5, para. 24.

<sup>59</sup> See articles 13 and 29 and Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education, para. 9.

<sup>60</sup> General Assembly resolution 70/1, para. 51.

## IV. Good practices in promoting children's rights in climate action

41. Some States, civil society organizations and other actors have already taken measures to integrate children's rights in their climate actions. Existing good practices should be used to inform and enhance further national and intergovernmental action on climate change. These may involve, for example, educational policies, disaster risk reduction measures, strategic litigation and engagement by human rights mechanisms.

### A. Educational policies

42. Education on environmental stewardship, climate change and disaster risk reduction can prepare children of all ages to better address emerging environmental challenges. Most States that provided inputs for the present study had climate change education programmes and/or strategies to develop climate change and environmental curricula.<sup>61</sup> The United Nations Educational, Scientific and Cultural Organization, through its Climate Change Education for Sustainable Development programme, has been working with national Governments, particularly in African and small island developing States, to integrate climate change into national curricula through innovative approaches.<sup>62</sup>

43. In Italy, collaboration between the ministries for the environment and for education led to the launch of new guidelines for environmental education.<sup>63</sup> Extracurricular projects can also foster children's activism and involvement in climate change policies. In Zambia, UNICEF has supported the Unite4Climate project, a child-led advocacy programme that empowers young people aged 11 to 17 to become climate ambassadors and agents of change within their communities and in global climate negotiations.<sup>64</sup> Some States have established national platforms for young people to voice their concerns and share their ideas about climate change and other issues, for example, the national environment and health platform for young people in Lithuania<sup>65</sup> and the Children's Parliament in Namibia.<sup>66</sup> In Slovenia, the Administration for Civil Protection and Disaster Relief trains young people in disaster response and ensures access to information for all children, including those with disabilities.<sup>67</sup>

### B. Disaster risk reduction

44. The incorporation of the principle of the best interests of the child throughout disaster risk reduction, sustainable development and climate change action is key to protecting children's rights in a changing climate. In the Philippines, the Children's Emergency Relief and Protection Act of 2016 provides for specific measures to protect and educate children in the context of emergencies, ensure their participation in relevant decision-making processes and collect better data.<sup>68</sup> In Viet Nam, a law on environmental protection incorporates the principles of the best interests of the child and gender equality in relation to green growth and climate change;<sup>69</sup> the country is also considering a child-

<sup>61</sup> The inputs used for the study are available at [www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/RightsChild.aspx](http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/RightsChild.aspx).

<sup>62</sup> United Nations Educational, Scientific and Cultural Organization, *Not Just Hot Air: Putting Climate Change Education into Practice* (Paris, 2015).

<sup>63</sup> Input from Italy.

<sup>64</sup> Input from UNICEF and Germany.

<sup>65</sup> Input from Lithuania.

<sup>66</sup> Input from Namibia.

<sup>67</sup> Input from Slovenia.

<sup>68</sup> Input from the Philippines.

<sup>69</sup> Input from UNICEF.

centred programme on disaster risk reduction for 2017-2021 that would focus on capacity-building in mitigating the impacts of recurring weather risks on children.<sup>70</sup>

45. Indonesia has linked its Child Friendly Cities initiative with climate change and disaster risk reduction objectives by piloting a child-centred climate risk assessment method.<sup>71</sup> In its development cooperation policy, Germany has committed to protecting the best interests of the child and has allocated funding for climate change adaptation, resilience and disaster risk reduction projects involving children and young people.<sup>72</sup> At the national level, Slovakia implements the Convention of the Rights of the Child through its national plan of action for children, which is taken into account in climate policies.<sup>73</sup>

### C. Litigation

46. While future generations lack clear legal standing under international law, domestic developments highlight ways in which their interests can be protected through climate change policies and litigation. Some national constitutions have included references to future generations in their provisions on environmental rights. Article 33 of the Constitution of the Plurinational State of Bolivia, for example, enshrines the right to a healthy, protected and balanced environment to enable the development of individuals and collectives of present and future generations. While explicitly referencing future generations, as the Plurinational State of Bolivia has done, could provide a basis for climate litigation directly on behalf of those generations, this may not be explicitly necessary to protect their interests. Climate litigation by today's children has the potential to safeguard the interests of the next generations, and a legal basis for such litigation exists in many countries. For example, in Azerbaijan, articles 30 and 38 of the Law on child rights ensure protection and emergency support to children affected by natural disasters, and article 39 of the Constitution guarantees redress for damages caused by environmental impacts.

47. In some countries, children and their representatives have already engaged in environmental litigation. In *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources*, the Supreme Court of the Philippines ruled on behalf of a class representing children that the State had an intergenerational responsibility to maintain a clean environment. In *Gbemre v. Shell Petroleum Nigeria Limited and Others*, a Nigerian court ordered Shell Petroleum to take immediate steps to cease gas flaring, which contributed to respiratory diseases, greenhouse gas emissions and agricultural problems. It found that gas flaring violated the rights to human dignity and life guaranteed in the Nigerian Constitution and the African Charter on Human and Peoples' Rights. In the United States of America, a group of 21 plaintiffs between the ages of 9 and 20 have filed suit against the federal Government alleging that inadequate climate change mitigation measures constitute a violation of their constitutional rights to life, liberty and property, among others.<sup>74</sup> Precedents such as these demonstrate the potential role of the judicial system in protecting children from harmful activities, including those that contribute to climate change.

### D. Engagement by human rights mechanisms

48. National human rights institutions, the human rights treaty bodies and the special procedures and universal periodic review of the Human Rights Council can all play a role in protecting children's rights from the impacts of climate change. The Committee on the Elimination of Discrimination against Women, for example, is currently drafting a general

<sup>70</sup> See [www.ohchr.org/Documents/Issues/ClimateChange/RightsChild/Update14.3/StatementPanelCCandrightsofthechildHEMHAKimNgoc.pdf](http://www.ohchr.org/Documents/Issues/ClimateChange/RightsChild/Update14.3/StatementPanelCCandrightsofthechildHEMHAKimNgoc.pdf).

<sup>71</sup> Input from UNICEF.

<sup>72</sup> Input from Germany.

<sup>73</sup> Input from Slovakia.

<sup>74</sup> *Juliana et al. v. United States of America et al.* See Our Children's Trust ([www.ourchildrenstrust.org/us/federal-lawsuit/](http://www.ourchildrenstrust.org/us/federal-lawsuit/)).

recommendation on gender-related dimensions of disaster risk reduction in a changing climate,<sup>75</sup> while the Committee on the Rights of the Child has issued, on several occasions, concluding observations including observations and recommendations on climate change.<sup>76</sup> In 2015, the Commonwealth Forum of National Human Rights Institutions issued the St. Julian's Declaration on Climate Justice, in which the institutions committed to, *inter alia*, "promote the principle of equality and non-discrimination in climate action, including the rights of children". The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, whose forthcoming report will focus on children, and other special procedure mandate holders have focused on the impacts of climate change on human rights in their reporting.<sup>77</sup> Finally, specific recommendations related to climate change and its impacts on the rights of the child have been issued on several occasions in the context of the universal periodic review of the Human Rights Council.<sup>78</sup>

## V. Conclusions and recommendations

49. The conclusions and recommendations below are derived from the various elements that have informed the present study.

### A. Conclusions

50. The negative impacts of climate change, including the increasing frequency and intensity of natural disasters, changing precipitation patterns, food and water shortages, and the increased transmission of communicable diseases, threaten the enjoyment by children of their rights to health, life, food, water and sanitation, education, housing, culture and development, among others. Climate change heightens existing social and economic inequalities, intensifies poverty and reverses progress towards improvement in children's well-being. All children are exceptionally vulnerable to the negative impacts of climate change, with the youngest children being most at risk.

51. Climate change has a disproportionate impact on some children, including children with disabilities, children on the move, poor children, children separated from their families and indigenous children. Girls also face heightened risks due to climate change. In climate-vulnerable States and climate-sensitive areas, climate change poses a contemporaneous threat to inhabitants' rights to life, survival and development, among others. The rights and opportunities of children living in such areas can be severely affected. Beyond threatening children's physical well-being, climate change poses a threat to their cultural identity, to their connections with the natural environment and to their education.

52. The human rights obligations and responsibilities contained in the Convention on the Rights of the Child, the Paris Agreement and other international human rights instruments require States and other duty bearers, including businesses, to take action to protect the rights and best interests of children from the adverse effects of climate change. Many States already have in place laws, policies and commitments related to the protection of children's rights, the preservation of a healthy environment and climate change mitigation and adaptation. However, further action is needed to promote accountability for all actors, ensure children's access to justice and protect children from the negative impacts of climate change. Children have a right to meaningful participation in climate policymaking aimed at accomplishing these

<sup>75</sup> See [www.ohchr.org/EN/HRBodies/CEDAW/Pages/DraftGRDisasterRisk.aspx](http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DraftGRDisasterRisk.aspx).

<sup>76</sup> See, for example, CRC/C/GBR/CO/5.

<sup>77</sup> See, for example, A/HRC/31/52 and [www.thecvf.org/wp-content/uploads/2015/05/humanrightsSRHRE.pdf](http://www.thecvf.org/wp-content/uploads/2015/05/humanrightsSRHRE.pdf).

<sup>78</sup> See, for example, A/HRC/33/6 (Samoa, 2016), A/HRC/30/13 and Corr.1 (Marshall Islands, 2015), A/HRC/26/9 (Vanuatu, 2014), A/HRC/24/8 (Tuvalu, 2013) and A/HRC/16/7 (Maldives, 2011).

objectives and should play an active role in inspiring and shaping more effective climate policies.

53. Human rights, climate change, development and disaster risk reduction, including relevant international instruments and processes, are inextricably linked. A child rights-based approach to climate change mitigation and adaptation is called for by the intersections of these various frameworks with human rights obligations. It requires States to take affirmative measures to respect, protect, promote and fulfil the human rights of all children and to integrate their rights in all climate mitigation and adaptation policies and actions.

54. Fundamentally, a child rights-based approach requires:

(a) Ambitious mitigation measures to minimize the future negative impacts of climate change on children to the greatest extent possible by limiting warming to no more than 1.5°C above pre-industrial levels, as called for in the Paris Agreement;

(b) Adaptation measures that focus on protecting those children most vulnerable to the impacts of climate change;

(c) Mitigation and adaptation actions that are the product of participatory, evidence-based decision-making processes that take into account the ideas and best interests of children as expressed by children themselves.

55. Within these efforts, particular attention should be paid to girls, children with disabilities, indigenous children and other children who may be disproportionately affected by climate change. All children should be treated as active participants in climate action.

56. Truly sustainable, rights-based development requires climate actions that are informed by and take into consideration children's rights, intergenerational equity and the needs of future generations. These actions should be evidence based and supported by a free, transparent exchange of good practices, resources and technical assistance adequate to address the threat of climate change in line with international human rights laws, norms and standards.

## B. Recommendations

57. A child-rights based approach to climate change requires all relevant actors to take steps to ensure children's rights policy coherence, empower children to participate in climate policymaking, guarantee children access to remedies for climate harm, better understand the impacts of climate change on children and mobilize adequate resources for child rights-based climate action. When pursuing these objectives, the particular needs of those children most vulnerable to climate change and its impacts must be taken into account.

### 1. Ensure children's rights policy coherence

58. States should ensure that children's rights considerations are integrated in their climate, disaster risk reduction and development activities. Efforts should be taken to link actions, positions and processes related to the United Nations Framework Convention on Climate Change, the Human Rights Council, the 2030 Agenda for Sustainable Development and the Sendai Framework for Disaster Risk Reduction 2015-2030 in order to establish a coherent approach to sustainable development that benefits all persons, particularly children. This should include:

(a) Implementing the Sustainable Development Goals relating to child poverty and malnutrition, access to education, child mortality and health, and water and sanitation, among others, in such a way as to enhance children's resilience to climate change and reduce inequalities;

(b) Integrating children's rights considerations in the implementation of the United Nations Framework Convention on Climate Change, including in the

transparency framework, in intended nationally determined contributions and other communications and in the work of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and its taskforce on displacement, in order to promote accountability and more effective climate policies;

(c) Ensuring that climate adaptation policies improve disaster risk preparedness and enhance the adaptation capacities of all children, taking into account the needs and vulnerabilities of those most at risk. Gender considerations, for example, should be accounted for in climate change and disaster risk management policies, projects and planning processes.

59. Human rights mechanisms, including the Committee on the Rights of the Child, should consider ways to hold States accountable for their climate commitments, to better document the impacts of climate change and to promote rights-based climate action. As recommended during the day of general discussion on children's rights and the environment held by the Committee on the Rights of the Child, the issue of the environment could be routinely integrated in concluding observations. Civil society inputs to the Committee review process should address climate change and its impacts on children's rights and draw attention to the adequacy of States' individual contributions to efforts to limit climate change to 1.5°C above pre-industrial levels, as well as the impacts of climate actions. Similarly, States should use the universal periodic review mechanism of the Human Rights Council to promote accountability for climate and human rights commitments.

## 2. Empower children to participate in climate policymaking

60. All children, without discrimination, should be prepared for and included in climate decision-making in order to ensure that their best interests are protected. Children's involvement in the design and implementation of climate policies and climate vulnerability assessments should be facilitated according to their age and maturity.<sup>79</sup> Consultative mechanisms, improved dissemination of information and other strategies to engage children are needed for their meaningful participation. States should facilitate the participation of children in ongoing processes related to the United Nations Framework Convention on Climate Change that are likely to affect their development and survival.

61. Climate change education can empower educators, parents and children as agents of change. Educational curricula should transfer knowledge and develop skills that will equip children to confront climate-related challenges taking into account each child's particular local context and, as appropriate, traditional knowledge. Climate education should, inter alia:

(a) Raise awareness about appropriate lifestyle choices for sustainable development, such as low-carbon transportation, energy and consumption behaviours;<sup>80</sup>

(b) Emphasize solidarity, promote cooperation with children from other countries and create opportunities for children's participation in environmental decision-making;<sup>81</sup>

(c) Include access to up-to-date, meaningful and age-appropriate information about the causes of climate change, its impacts and adaptive responses, including disaster risk reduction and emergency preparedness.

<sup>79</sup> For example, the inclusion of girls as participants in the design, planning and implementation of climate strategies will lead to more effective policy formation. See, for example, United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and Mary Robinson Foundation — Climate Justice. *The Full View: Ensuring a Comprehensive Approach to Achieve the Goal of Gender Balance in the UNFCCC Process*, 2nd ed. (2016), available at [www.mrfcj.org/wp-content/uploads/2016/11/MRFCJ-Full-View-Second-Edition.pdf](http://www.mrfcj.org/wp-content/uploads/2016/11/MRFCJ-Full-View-Second-Edition.pdf).

<sup>80</sup> See, for example, target 4.7 of the Sustainable Development Goals.

<sup>81</sup> See, for example, Committee on the Rights of the Child, general comment No. 1, paras. 9 and 13.

### 3. Guarantee children access to remedies

62. States and other responsible actors should take measures to ensure that children have access to effective remedies when they suffer harm from climate action and inaction. Such measures could include:

(a) Integrating the right to a healthy environment and the rights of future generations in national constitutions and legislation in order to promote the justiciability of those rights and strengthen accountability systems;

(b) Ratifying the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, which established a complaints procedure for violations of children's rights;

(c) Employing extraterritorial jurisdiction and taking other measures, as appropriate, to ensure responsible conduct by businesses not only in emissions reductions but also in remedying past harm;

(d) Developing a loss and damage system that ensures effective remedies for climate-related human rights harm, particularly that experienced by children;

(e) Ensuring that climate mitigation and adaptation projects provide access to effective redress mechanisms for human rights harm.

### 4. Better understand the impacts of climate change on children

63. In order to better protect children from the impacts of climate change, all actors should support improved understanding of the relationship between climate change and children's rights. This could be promoted through measures such as:

(a) Disaggregated data collection;

(b) Impact assessments with respect to children's rights and future generations;

(c) Enhanced intersectoral cooperation, as called for in the Geneva Pledge for Human Rights in Climate Action;

(d) Establishment of standing consultative committees that include children's perspectives;

(e) Improved reporting on children's rights and climate change to relevant United Nations Framework Convention on Climate Change and human rights mechanisms.

64. In this regard, civil society actors and participants at the 2010 Social Forum have called for the appointment of a United Nations special rapporteur on human rights and climate change.<sup>82</sup>

### 5. Mobilize adequate resources for child rights-based climate action

65. States, keeping in mind their human rights obligations and their common but differentiated responsibilities and respective capabilities, should take measures to mobilize adequate resources for effective climate action that does not harm but rather benefits children. States should ensure transparent, participatory and informed decision-making in the allocation of resources, including by conducting impact assessments with respect to children's rights and future generations. Further, measures should be taken to improve international cooperation and build capacity for climate action in developing countries through the transfer of technology and the sharing of technical expertise. Mitigation must be a top priority, as it is the key to minimizing the negative impacts of climate change. In these efforts, businesses also have human rights responsibilities, which must not be neglected.

66. With regard to climate adaptation, resources should be directed towards efforts to promote non-discriminatory access to basic necessities and services for children in

<sup>82</sup> A/HRC/16/62.

the light of the adverse effects of climate change. Investments in education and related infrastructure are a rights-based, cost-effective and sustainable method of empowering children. Health, water and sanitation, housing infrastructure and related services are also critical to children's adaptation and resilience. Disaster risk reduction, including training for teachers, parents and children, and climate-resilient schools and infrastructure, is another key area for investment. In the aftermath of climate-related disasters, resources should be devoted to ensure children's access to health services, to reunite children with their families and to not only protect them with physical support, such as food and clean water, but also to provide psychosocial care to prevent or address fear and traumas.<sup>83</sup> Support should take into account children's distinct needs for play and safety.

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<sup>83</sup> See Committee on the Rights of the Child, general comment No. 15, para. 40.