

Submission for the report of the Special Rapporteur on human rights and the environment on the environment and the rights of the child

This submission was made on behalf of the Child Rights International Network - CRIN (www.crin.org) on 14 September 2017.

All of children's rights apply in some respect in the context of the environment. This submission focuses on two particular aspects of children's rights in this area, participation and the relationship between population and sexual and reproductive rights, addressing and discussing good practices in response to questions 2 and 5 of the questionnaire. CRIN is able to provide further information about any of the issues covered in this submission.

To avoid duplication, please find relevant information in CRIN's previous related submissions. CRIN's submission for the 2016 day of discussion of the Committee on the Rights of the Child, which focused on children's rights access to justice in relation to environmental rights,¹ as did our submission to the Special Rapporteur on toxic wastes.² Our recent submission to the Special Rapporteur on water and sanitation also addresses access to justice for children for environmental damage involving contamination of water and the accountability of private companies.³

Participation

Children's right to be heard is a core principle of the Convention on the Rights of the Child, a right in itself and a tool to interpret and apply all other rights under the Convention.⁴ In the context of environmental rights, children's participation in decision-making processes, including those related to climate adaptation and mitigation policies, is essential to a children's rights-based approach.⁵ The full realisation of this principle requires children's views to be heard and given due weight in legislation, policy debates and before courts and complaint mechanisms. In this context, two forms of participation are key: political and legal.

Political participation

A study of children's attitudes to political issues across 41 countries conducted in 2016 found that the environment, alongside education and food were the top concerns for children around the world.⁶ For children's participation rights to be fully respected, these views must be heard and given due weight within the political process. Voting is perhaps the archetypal

¹ Available at:

<http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/ChildRightsInternationalNetwork.pdf>.

² Available at: www.crin.org/node/43284.

³ Available at: www.crin.org/node/43247.

⁴ Committee on the Rights of the Child, General Comment No. 12 (2009) the right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. 6.

⁵ Office of the United Nations High Commissioner for Human Rights, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, A/HRC/35/13, 4 May 2017, para 32(b).

⁶ Child Fund International, *Small Voices, Big Dreams*, May 2016. Available at: https://www.childfund.org/uploadedFiles/NewCF/Impact/Knowledge_Center/SVBD_Report_11-07-2016.pdf.

form of political participation. Though no country in the world allows children under the age of 16 to vote, a small number of countries, including Argentina,⁷ Nicaragua⁸ and Brazil⁹ have lowered the voting age to 16. This limited extension of the franchise to children is a step towards more fully recognising children's right to be heard and for their views to be given due weight in the political process. The protection of children who engage in political demonstrations or protests related to environmental rights is also critical in a context in which human rights defenders are at particular risk of violent retaliation. Good practices in protecting environmental human rights defenders have been well documented by the Special Rapporteur on the situation of human rights defenders and these protections apply to children as well as adults.¹⁰

For children to effectively exercise their right to free expression and engage with the political system, they must also have access to the information necessary to do so. The Committee on the Rights of the Child has stressed the overlap between children's participation and education rights, stressing the need to educate children about environmental health issues.¹¹

Legal participation and access to justice

Recognising that many children will not be in a position to bring legal complaints themselves, whether because of a lack of standing, capacity or resources, adaptations to the legal system are necessary to ensure children's participation through the justice system. Many of these barriers can be addressed by legal systems that take account of the position and needs of children. Standing provisions that eschew strict age limits and incorporate capacity based tests for whether a child is able to instruct a lawyer strike a balance between the fact that many children will need and want support with the recognition that there is no arbitrary age at which children are willing and able to act on their own initiative.¹² Legal aid and assistance covering a broad range of criminal, civil, administrative and constitutional cases is also vital for overcoming the financial barriers that children will almost always face in bringing a complaint. Provisions explicitly excluding children from paying all costs related to judicial proceedings, such as in Belgium,¹³ or excluding parental income from decisions on whether children can access legal aid, such as in Lithuania and Luxembourg,¹⁴ help to overcome some of these barriers.

⁷ Law 27,774 of Citizenship Rights promulgated in 2012, Article 1

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/200000-204999/204176/norma.htm>.

⁸ National Election Law, Article 33.

⁹ Constitution of Brazil, Article 14(1)(ii)(c).

¹⁰ See UN Special Rapporteur on the situation of human rights defenders, *They Spoke Truth to Power and were Murdered in Cold Blood: Analysis of the situation of environmental human rights defenders and concrete recommendations to better protect them*, 2016. Available at:

https://www.protecting-defenders.org/sites/protecting-defenders.org/files/environmentaldefenders_0.pdf.

¹¹ See, for example, CRC/C/15/Add.259, paras. 60 and 61' CRC/C/15/Add.262, para. 54.

¹² See, for example, Scotland discussed in CRIN, *Rights, Remedies and Representation: A global report on access to justice for children*, February 2016, p. 17.

¹³ For discussion, see CRIN, *Access to justice for children: Belgium*, April 2015, p. 14. Available at: www.crin.org/node/41373.

¹⁴ For full details see CRIN's access to justice country reports for Lithuania and Luxembourg, available at: www.crin.org/node/42362.

Collective complaint mechanisms and public interest litigation, whether enshrined in the Constitution¹⁵ or exercised through civil litigation for negligence or nuisance,¹⁶ provide a less onerous means of child claimants bringing complaints without baring the entire burden of the legal action.

Intergenerational justice is not primarily a children's rights issue, rather it is about ensuring that there is distributive justice between generations and that the rights of different generations are equal over time. Nonetheless, children are commonly the subject of environmental court challenges revolving around this concept, such as the seminal 1994 case before the Supreme Court of the Philippines ruling in favour of a group of children concerning the destruction of rainforests violated the right to a clean environment, to exist from the land and to provide for each generation.¹⁷

Population

A rapidly increasing global population poses a serious challenge to children's rights and intergenerational equality with respect to the environment, placing a burden on resources and living standards. This burden has serious repercussions for the full range of children's rights, from health to an adequate standard of living. In this respect the full realisation of children's rights in the context of reproductive education and healthcare dovetail with protection of the environment. Ensuring that children have the information and means to decide whether or when they wish to become parents themselves can help to address rapidly increasing populations and the environmental challenges this entails. We recommend that the Special Rapporteur host a discussion on the human rights and environmental implications of increasing population.

¹⁵ See, for example, Constitution of Bolivia, Arts.135-136.

¹⁶ See, for example, *Corby Group Litigation v. Corby District Council* [2009] EWHC 1944. Available at: <http://www.bailii.org/ew/cases/EWHC/TCC/2009/1944.html>.

¹⁷ *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources* [1994] 33 ILM 173. Summary and link to full judgment available at: www.crin.org/node/6943.