

**LEGAL EMPOWERMENT
TO ADVANCE CLIMATE
AND ENVIRONMENTAL
JUSTICE FOR CHILDREN
IN EAST ASIA AND THE PACIFIC**

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1 Abbreviations and Glossary

1.1 Abbreviations

Abbreviation	Meaning
Case Studies	<ol style="list-style-type: none"> 1 Communication to the Committee on the Rights of the Child (Global)¹ 2 Sharma v Minister for the Environment case (Australia)² 3 Minors Oposa v Factoran case (Philippines)³ 4 Klity Creek litigation (Thailand)⁴ 5 Pacific Islands Students Fighting Climate Change campaign for an International Court of Justice Advisory Opinion (Vanuatu / the Pacific Islands)⁵ 6 Klima Action Malaysia (Malaysia)⁶ 7 Air pollution mapping project led by children and young people in Mongolia (Mongolia)⁷ 8 Bye Plastic Bags campaign (Indonesia)⁸
CRC	Convention on the Rights of the Child 1989
CSO	Civil society organisation
Discussion Paper	Discussion Paper on Children’s Right to a Healthy Environment in East Asia and the Pacific
NGO	Non-governmental organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights (UN Human Rights)
Optional Protocol	Optional Protocol to the Convention on the Rights of the Child on a communications procedure (entered into force 14 April 2014)
Region	East Asia and the Pacific
SLAPP	Strategic lawsuit against public participation. This is a lawsuit filed with the intent to intimidate or harass people engaged in acts of public participation, including climate and environmental activism.
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme

Abbreviation	Meaning
UNFCCC	United Nations Framework Convention on Climate Change
UNICEF	United Nations Children's Fund
UNICEF EAPRO	United Nations Children's Fund, East Asia and Pacific Regional Office
UNODC	United Nations Office on Drugs and Crime

1.2 Glossary

Abbreviation	Meaning
Climate justice	The concept of climate justice promotes viewing climate change through a human rights lens, acknowledging the social and political aspects of the climate crisis alongside environmental concerns. ⁹ It recognises that climate change can have a differing social, economic, health, and other adverse impacts on marginalised or vulnerable communities. ¹⁰ Central to climate justice is the recognition that those who have contributed the least to climate change, are also those most impacted. ¹¹
Environmental justice	The concept of environmental justice is primarily understood as the process of obtaining justice for those who have suffered injustice due to environmental abuses, including justice for non-humans such as animals and plants. The concept extends from taking action against environmental abuses, to participation in processes of development, implementation and enforcement of environmental laws, regulations, rules and policies. It also recognises that minority groups are at greater risk of suffering the impacts of environmental abuses and prioritises the participation of all people, including the most vulnerable. ¹²
Legal aid	For the purposes of this report, 'legal aid' involves legal work (such as legal advice, assistance, and representation) undertaken by a certified legal practitioner, provided at minimal to no cost to the entitled person. ¹³
Legal assistance	For the purposes of this report, 'legal assistance' involves the provision of legal support (including paralegal and legal administrative duties) that do not require a certified legal practitioner.
Litigious cases	Litigious cases in this report are case studies that concern lawsuits, litigation or similar legal processes through adjudicatory bodies. Examples include civil proceedings before domestic courts, as well as complaints and petitions before intergovernmental bodies.
Non-litigious cases	Non-litigious cases in this report are case studies that do not concern lawsuits, litigation or similar legal processes. Examples include campaigning for legislative reform, projects aimed at increasing awareness, and rights education amongst children and young people.





2 Preface

2.1 Purpose of this Report

- 1 This report (**Report**) has been prepared to:
 - (a) support children, caregivers and civil society organisations, States and intergovernmental and international organisations in the East Asia and Pacific region (**Region**) to enable children to claim and enjoy their climate and environmental rights;
 - (b) help identify gaps, challenges and opportunities to support children’s legal empowerment to advance climate and environmental justice in the Region; and
 - (c) facilitate the development and sharing of knowledge on children’s legal empowerment to advance climate and environmental justice in the Region.



2.2 Scope

- 2 The findings of this Report are based on eight case studies that involve children from the Region (the **Case Studies**).¹⁴ The Case Studies display a mixture of litigious¹⁵ and non-litigious¹⁶ strategies employed by children and young people to advance climate and environmental justice causes.

2.3 Structure

- 3 This Report is made up of the following sections:
 - (a) **Executive summary:** summarises the core themes of this Report.
 - (b) **Part I:** outlines international and regional developments regarding the recognition of children’s rights to a safe, clean, healthy and sustainable environment.

- (c) **Part II:** outlines a conceptual framework of legal empowerment, access to justice, and climate and environmental justice, which informs the legal empowerment strategy outlined in Part VI.
- (d) **Parts III, IV and V:** draw lessons from the Case Studies to identify key barriers, risks and opportunities for the legal empowerment of children to advance climate and environmental justice.
- (e) **Part VI:** concludes with a legal empowerment strategy and key recommendations for children and young people, their caregivers, civil society organisations, States and intergovernmental and international organisations in the Region to use legal and non-legal processes to advance children’s legal empowerment to advance climate and environmental justice.
- (f) **Case Studies:** the schedule contains key information about each Case Study.

2.4 Methodology and limitations

- 4 This Report builds upon the findings of a discussion paper by King & Wood Mallesons for UNICEF on children’s rights to a healthy environment in East Asia and the Pacific (**Discussion Paper**).¹⁷
- 5 Research for this Report was based on a desktop review of primary and secondary legal materials, academic literature, online news articles, consultations with UNICEF EAPRO, UNICEF Country Offices, partners and experts.
- 6 This Report is informed by the UNICEF-UNEP-OHCHR Principles and Policy Guidance on Children’s Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region,¹⁸ the report of the UN Secretary General on legal empowerment of the poor and eradication of poverty,¹⁹ the Convention on the Rights of the Child (**CRC**),²⁰ and the Paris Agreement.²¹
- 7 This Report is also informed by the Building Pathways to Empowerment Conference on Young People’s Rights to Civic Engagement in East Asia and Pacific Region, hosted by UNICEF and World Vision Asia Pacific in October 2021 (**Civic Engagement Conference**),²² as well as the sixth session of the Civic Engagement Conference concerning “Climate and Environmental Justice for and by children and young people”, where the authors presented preliminary findings from this Report. This Report incorporates feedback from the Civic Engagement Conference participants, via a survey circulated in December 2021 to approximately 380 conference participants. The survey yielded 50 responses, of which 16 were validly completed and analysed for the purposes of this Report.²³ The survey asked questions around their experiences of the challenges, opportunities and risks faced by children and young people in using the law to address climate change and environmental issues.
- 8 The Case Studies in this Report were selected to incorporate:
 - (a) examples of children’s legal empowerment from across the Region, including local, national, regional and international examples involving young people from the Region;
 - (b) cases relating to issues of climate change, environmental degradation and pollution, including air pollution, toxic waste, and marine pollution;
 - (c) litigious²⁴ and non-litigious²⁵ examples of legal empowerment, in recognition that empowerment and access to justice may occur both through and beyond a formal judicial system;
 - (d) examples that involve a diversity of actors and stakeholders, including individual activists, NGOs and civil society organisations (**CSOs**), international organisations, national and local government authorities;
 - (e) examples that demonstrate a diversity of outcomes; and
 - (f) cases involving children and young people from marginalised and vulnerable communities, as well as those who experience relative privilege (for example, through access to education, technology, and socio-economic security).
- 9 While this Report aims to be comprehensive, it should not be considered exhaustive. It does not consider all litigious and non-litigious strategies pursued by children and young people in the Region. The authors acknowledge the many other extraordinary efforts of young people, children and their communities to advance children’s climate and environmental rights in the Region.
- 10 Other limitations include challenges in securing authoritative legal sources and limited access to in-country stakeholders for each Case Study. The authors were unable to undertake in-country field research due to the challenges of the COVID-19 pandemic. Further engagement with national and regional stakeholders, and analysis of other case studies, would enhance the findings in this Report.





3 Executive Summary

- 11** Over 580 million children²⁶ across the East Asia and Pacific region (the **Region**) are vulnerable to the global environmental crisis. Over a quarter of child deaths under 5 years in the Region are attributable to environmental threats such as air pollution, exposure to hazardous chemicals, and inadequate water and sanitation.²⁷ For example, deforestation threatens biodiversity loss and the future of indigenous cultural practices in Malaysia,²⁸ rising sea levels threaten the continued existence of low-lying Pacific nations, while the COVID-19 pandemic has intensified the challenge of addressing such threats across the entire Region.
- 12** The collective impacts of climate change, environmental degradation and biodiversity loss undermine children’s rights and threaten the future ecosystem that they will inhabit. The global environmental emergency results from the actions of current and previous generations of adults. Yet it is present and future generations of children who will live with the consequences. Recognising this threat, children across the Region are calling for environmental and climate justice aligned with internationally accepted norms of intergenerational equity.
- 13** These calls are reinforced by growing international recognition of children’s rights to a safe, clean, healthy and sustainable environment, which has been acknowledged in the Region.²⁹ However, while children possess the fundamental right to be heard and taken seriously, children face particular vulnerabilities and barriers in accessing justice, including climate and environmental justice.³⁰
- 14** Key barriers for children across the Region range from limited access to education, family support, legal assistance, legal aid, technology, the internet, specialised human rights institutions, international quasi-judicial forums and the compounding challenge of the COVID-19 pandemic.³¹ Children across the Region also face considerable risks when advancing climate and environmental justice causes, such as cyber harassment, legal harassment and physical violence.³²
- 15** This Report considers how to promote the legal empowerment of children to enjoy their rights to a safe, clean, healthy and sustainable environment. Recognising that children typically have limited access to formal judicial mechanisms, this Report also reflects on how children can advance their rights through non-litigious avenues. Case studies from across the Region are incorporated into this Report to demonstrate how children’s legal empowerment can be expressed and achieved in practice.³³
- 16** There are significant opportunities for the legal empowerment of children across the Region. While lawyers, individuals with legal training and the courts have a role to play, so too do non-lawyers, the media and business sectors.³⁴ There are clear opportunities for States to facilitate access to international judicial forums, and for international organisations and foreign aid donors to support youth-led initiatives to access climate and environmental justice. Perhaps most significantly, young people across the Region continue to reflect global trends of empowering other young people to take action to advance climate and environmental justice.³⁵

17 This Report concludes with targeted recommendations for children and young people, caregivers, civil society actors, intergovernmental organisations and States, to support the legal empowerment of children to advance climate and environmental justice.³⁶ Our concluding recommendations are aligned to the following four-step legal empowerment strategy:

- (a) Education:** provide children and young people with effective access to education regarding their legal system, and their rights to a safe, clean, healthy and sustainable environment;³⁷
- (b) Expression:** enable children and young people to express their views freely about climate change and

environmental issues that affect them, and to advocate for their climate and environmental rights, both individually and collectively;³⁸

- (c) Access to remedy:** facilitate children and young people's access to local, national and international judicial and quasi-judicial forums and legal processes, to support their access to legal remedies in relation to climate change and environmental issues;³⁹ and
- (d) Safety:** foster a child-friendly and safe environment for children and young people to use the law and the legal system, as well as non-litigious strategies, to take action on climate change and environmental issues.⁴⁰



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4 Children's rights to a safe, clean, healthy and sustainable environment



4.1 The impact of climate change and environmental degradation on young people in the Region

Impact of the climate crisis on children and young people in the Region

- 18** The climate crisis is a child rights crisis. There are over 580 million children in the Region, with an additional 30 million children born in the Region each year.⁴¹ Globally, the Region has some of the highest numbers of children exposed to multiple climate risks, including more frequent and severe floods, droughts, storms, salt-water intrusion, and heat stress. The Global Climate Risk Index 2021 ranks three countries in the Region (Myanmar, Philippines and Thailand) in the top 10 countries most affected by extreme weather events in the period 2000-2019.⁴²
- 19** As current and future generations of young people come of age, they will increasingly bear the burden of adverse climate change impacts despite being the least responsible for historical greenhouse gas emissions.⁴³ Climate change impacts affect children's access to basic services, including education, health, clean water and sanitation.⁴⁴ Despite their vulnerability, children and young people are underrepresented in national policies to address climate change.⁴⁵
- 20** While most nations have committed under the Paris Agreement to limit global temperature increases and greenhouse gas emissions, the effects of climate change are already a lived reality for millions of children and young people across the Region. The forthcoming assessment report of the Intergovernmental
- 21** Children from marginalised or underprivileged communities are especially vulnerable to the adverse impacts of climate change. For example, the increased frequency and severity of extreme weather events exposes girls to greater risks of food insecurity and gender-based violence and exploitation.⁴⁷ Indigenous children, whose connection to land and traditional cultural practices is particularly disrupted by loss of biodiversity and forced migration, especially in low-lying nations threatened by rising sea levels.⁴⁸ Children with disabilities also experience more discrimination in disaster response measures and experience exclusion and adverse outcomes from disruptions to health, rehabilitation and other support services.⁴⁹



Panel on Climate Change contains sobering predictions of the world that the Region's children and young people will inherit. It foresees the critical threshold of 1.5°C warming above pre-industrial levels being reached almost two decades earlier than expected, in 2030, leading to disruption to the global climate system, dangerous weather extremes and rising sea levels that will disproportionately impact the lives of children and young people throughout the Region.⁴⁶

Impact of environmental degradation on children and young people in the Region

- 22 Environmental pollution poses significant risks to children and young people in the Region. More than 25% of deaths of children under 5 years are due to environmental factors such as air pollution, lack of adequate water and sanitation, and exposure to hazardous chemicals.⁵⁰
- 23 Air pollution is one of the greatest threats to child health globally.⁵¹ In Southeast Asia alone, around 99% of children under 5 in low and middle income countries are exposed to dangerous levels of air pollutants.⁵² In Northeast Asia, poor air quality in rapidly urbanising cities like Ulaanbaatar⁵³ have prompted young people to lead initiatives to monitor air pollution and advocate for improved air quality.⁵⁴
- 24 Industrial pollution, caused by toxic chemicals such as lead and pesticides, also present environmental health threats to children in the Region. For example, the illegal discharge of wastewater from a lead factory into Klity Creek in western Thailand caused children from remote indigenous communities to experience adverse health consequences, such as developmental and intellectual disabilities.⁵⁵
- 25 The loss of biodiversity and ecosystems through deforestation also impacts children and young people across the Region. The *Minors Oposa v Secretary of the Department of Environmental and Natural Resources*⁵⁶ case responded to prospective deforestation of virgin rainforests in the Philippines, and engaged issues of intergenerational equity and conserving natural ecosystems for future generations.⁵⁷ Deforestation can particularly impact the rights of indigenous children: for example, the prospective deforestation of Kuala Langat North Forest Reserve in Malaysia threatens the traditional lands and cultural practices of the local Orang Asli indigenous population.⁵⁸

4.2 International recognition of children's rights to a safe, clean, healthy and sustainable environment

- 26 Since the adoption of CRC in 1989, the link between children's rights and the environment has become increasingly well-established in the international community. In 1990, the World Summit for Children adopted the World Declaration on the Survival, Protection and Development of Children, which declared that parties would work for common measures for the protection of the environment, at all levels, so that all children can enjoy a safer and healthier future.⁵⁹ In 2002, the UN General Assembly adopted the "A World Fit for Children" declaration, whereby States committed to protecting the Earth for children and affirmed that they would safeguard the natural environment for present and future generations.⁶⁰



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27 More recently, in 2016, the Human Rights Council (Council) recognised that children are among the most vulnerable to the negative impacts of climate change and requested that the Office of the United Nations High Commissioner for Human Rights (OHCHR) consult with States, UNICEF and other relevant stakeholders to conduct a detailed analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child.⁶¹ In 2018, the Council became the first UN body to review the relationship between children’s rights and environmental protection, following a ground-breaking report by the UN Special Rapporteur on Human Rights and the Environment (**Special Rapporteur**).⁶²

28 In June 2021, the Committee on the Rights of the Child confirmed that it will draft a General Comment on children’s rights and the environment, with a special focus on the climate crisis (**GC26**).⁶³ General Comments are issued by the Committee to provide State parties with authoritative guidance on the content of the CRC. The GC26 intends to clarify the extent of States’ obligations relating to climate change and children’s rights, including in relation to

mitigation and adaptation.⁶⁴ It also intends to clarify the urgent need to address the adverse effects of environmental harm and climate change on children, as well as the relationship between children’s rights and the protection of ecosystems, biodiversity and management of and access to natural resources, alongside State’s obligations regarding policies on such matters.⁶⁵ At the time of this Report, the Committee has invited State parties to make submissions on a draft concept note for the GC26⁶⁶ and is running consultations with children and young people.⁶⁷ The GC26 is scheduled for publication in March 2023.

29 In October 2021, in a landmark resolution, the Council expressly recognised for the first time that a safe, clean, healthy and sustainable environment is a human right and called upon States to implement this right.⁶⁸ In parallel, the Council also adopted a resolution establishing a mandate for a Special Rapporteur on the promotion and protection of human rights in the context of climate change.⁶⁹ While the Council’s recent resolution is not legally binding, it creates additional impetus for formal recognition of the right to a safe, clean, healthy and sustainable environment.



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4.3 Recognition of children's rights to a safe, clean, healthy and sustainable environment in the Region

- 30 Children's rights to a safe, clean, healthy and sustainable environment are increasingly recognised in the Region. Over 20 countries in the Region have ratified the CRC, including all member States of the Association of Southeast Asian Nations (**ASEAN**). This is significant since the CRC's strong environmental dimensions promote a connection between children's rights and the environment.⁷⁰
- 31 ASEAN has also adopted three declarations concerning children's rights to a healthy environment, including the non-binding ASEAN Human Rights Declaration (**ASEAN Declaration**).⁷¹
- 32 At a national level, several countries recognise a legal right to a healthy environment. Fiji, Indonesia, Mongolia and Viet Nam recognise a constitutional right to a healthy environment.⁷² The constitutional right in Fiji protects the natural world for present and future generations.⁷³ Constitutional recognition is significant because in a national legal system, the constitution is typically the supreme source of law.
- 33 Likewise, a review of national laws in Cambodia, Fiji, Indonesia, Mongolia, and Viet Nam demonstrates that several countries in the Region expressly recognise a right to a healthy environment in national legislation.⁷⁴ While these laws do not express the right to be uniquely held by children, the general application of these laws to all citizens necessarily includes children.⁷⁵

4.4 Complaints to the Committee on the Rights of the Child

- 34** Article 12 of the CRC enshrines the fundamental right of children to be heard and taken seriously (see section 5.1 for more detail). This right supports the realisation of other children’s rights in the CRC and provides legal impetus for children’s participation in decision-making and access to judicial and administrative proceedings that affect them.
- 35** The *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*⁷⁶ (**Optional Protocol**) creates an avenue for children to raise complaints about alleged CRC rights violations to the Committee on the Rights of the Child. The Optional Protocol empowers the Committee to adjudicate complaints from children, groups of children, or their representatives, in relation to a violation of children’s rights by a State party to the Optional Protocol.⁷⁷
- 36** Forty-eight States have either acceded to or ratified the Optional Protocol, including four from the Region.⁷⁸ Accordingly, children in these countries can access the Committee complaints mechanism.⁷⁹ However, child petitioners must exhaust all available domestic remedies to be eligible to bring a complaint, unless access to such remedies is unreasonably prolonged or unlikely to bring effective relief.⁸⁰ Once eligible, complainants have one year to make a complaint.⁸¹
- 37** The Optional Protocol has recently been used by children and young people seeking to advance climate and environmental justice.⁸² A petition was filed in 2019 by 16 children from 12 countries (including the Marshall Islands and Palau) against Argentina, Brazil, France, Germany and Turkey. In October 2021, the Committee ruled that the complaint was inadmissible, but indicated that a State party to the CRC could be held responsible for the negative impacts of its carbon emissions on the rights of children both within and outside its territory.⁸³

4.5 Principles and Policy Guidance on Children’s Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region

- 38** Until recently there has been limited normative and practical guidance on how to apply children’s rights in an environmental context. To address this gap, UNICEF, UNEP and OHCHR consulted with key stakeholders from across ASEAN to develop the *Principles and Policy Guidance on Children’s Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region* (**Principles and Policy Guidance**).⁸⁴
- 39** The Principles and Policy Guidance offer guiding principles and practical guidance to support the realisation of children’s rights to a healthy environment across ASEAN. They are targeted towards five key stakeholder groups: (i) States; (ii) children; (iii) civil society actors; (iv) businesses; and (v) the media.
- 40** There are nine general principles and 28 specific principles. Two general principles explicitly address access to justice and legal empowerment of children.⁸⁵ Two specific principles emphasise the importance of strict and effective enforcement action for any violation of children’s rights to a safe, clean, healthy and sustainable environment,⁸⁶ as well as adopting and implementing appropriate measures to empower children to effectively access remedies for environmental harm.⁸⁷
- 41** From a policy perspective, the Principles and Policy Guidance recommend States in the Region consider implementing these principles through 15 key policy steps, including steps focused on law reform, strengthened regulatory enforcement, and ensuring access to judicial and non-judicial remedies.⁸⁸



5 Access to justice and legal empowerment for children



42 This section explains key theories underlying this Report, including concepts of access to justice, legal empowerment, climate and environmental justice, and intergenerational equity.

5.1 Access to justice for children

43 Children have traditionally been excluded by, or have had limited access to, formal justice mechanisms. In many jurisdictions, children do not possess independent legal standing to bring a claim before national courts or tribunals.⁸⁹ Likewise, in many social and cultural settings, children's perspectives may not be taken seriously, creating additional barriers to children's civic engagement and their ability to pursue effective remedies for environmental harm.

44 The Committee on the Rights of the Child notes that: "[f]or rights to have meaning, effective remedies must be available to redress violations."⁹⁰ Accordingly, a core issue for advancing children's enjoyment of their climate and environmental rights is to ensure that children have practical access to effective remedies to address any violation of those rights. Indeed, the Committee has explicitly called upon States to ensure effective, child-sensitive procedures are available to children and their representatives in pursuing remedies for breaches of children's rights.⁹¹

45 OHCHR defines access to justice for children as follows:

...the ability to obtain a just and timely remedy for violations of rights as put forth

in national and international norms and standards, including the Convention on the Rights of the Child. It applies to civil, administrative and criminal spheres of national jurisdictions, including customary and religious justice mechanisms, international jurisdictions, as well as alternative and restorative dispute resolution mechanisms, and covers all relevant judicial proceedings, affecting children without limitation, including children alleged as, accused of, or recognized as having infringed the penal law, victims and witnesses or children coming into contact with the justice system for other reasons, such as regarding their care, custody or protection.⁹²

46 Under this definition, children's access to justice focuses upon a just and timely access to legal remedy. In practical terms, it requires that children can access relevant information, including through legal and other services, rights education, and support from knowledgeable adults.⁹³

Access to justice through non-litigious mechanisms and national human rights institutions

47 While the OHCHR definition focuses upon access to justice through litigation and other forms of formal dispute resolution, children may also advance their rights through other means outside of formal judicial systems. The Principles and Policy Guidance recognises the role of non-judicial or quasi-judicial remedies, for example by recommending that States ensure that non-judicial and quasi-judicial mechanisms are available and functional to hold businesses and other economic actors to account for violating children's rights to a healthy environment.⁹⁴

48 Likewise, the Committee on the Rights of the Child acknowledges the important role of independent national human rights institutions in promoting and ensuring the implementation of the CRC rights.⁹⁵ The Committee has noted that all States need an independent human rights institution with responsibility for promoting and protecting children's rights,⁹⁶ and that such institutions should have the power to consider complaints submitted by or on behalf of children, and conduct investigations.⁹⁷

49 The Committee also recommends that such national human rights institutions try to ensure that children have access to effective remedies,⁹⁸ and the power to support children taking cases to Court, whether directly on behalf of child complainants or as an intervener in ongoing proceedings.⁹⁹ The Principles and Policy Guidance also recognise the importance of an institutional framework for hearing and investigating children's rights complaints at a national level, by recommending that States mandate an appropriate focal person or institution to accept children's complaints and grievances. Further, that where a national Children's Rights Commissioner is appointed, to ensure that they are appropriately trained and resourced to respond to grievances concerning children's rights to a healthy environment.¹⁰⁰

The concept of access to justice for children is recognised in international instruments

50 Key elements of access to justice for children can be found in international human rights instruments. These include: the right to relevant information;¹⁰¹ the right to an effective remedy;¹⁰² the right to a fair trial;¹⁰³ the right to be heard and taken seriously;¹⁰⁴ the right to prompt access to legal assistance and to prompt decisions by a Court;¹⁰⁵ and, the right to enjoy the above rights without discrimination.¹⁰⁶

51 Of particular importance for children's access to justice through the formal justice system is the right for children to be heard and taken seriously, as contained in Article

12 of the CRC, which outlines that State parties shall:

- (a)** assure that every child who is capable of forming his or her own views, has the right to express those views freely in all matters affecting the child;
- (b)** give due weight to the views of the child in accordance with the age and maturity of the child; and
- (c)** provide children with 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.

52 Article 12 of the CRC has been recognised by the Committee on the Rights of the Child as one of the four fundamental principles of the Convention besides the right to non-discrimination, the right to life and development, and the primary consideration of the child's best interests.¹⁰⁷

The role of businesses

53 The Committee on the Rights of the Child recognises the impact that businesses can have on children's rights and that States are obliged to provide effective remedies, including when violations of children's rights are committed by third parties such as businesses.¹⁰⁸ Acknowledging the risks posed by poor implementation and enforcement of laws that regulate businesses, the Committee has noted the important role of regulatory agencies such as environmental tribunals, taxation authorities and national human rights institutions, in investigating and monitoring children's rights abuses, and imposing sanctions upon businesses that infringe such rights.¹⁰⁹ The Committee has recommended that States take measures to ensure effective implementation and enforcement, including strengthening the powers of regulatory agencies, and providing effective access to justice mechanisms for children.¹¹⁰

- 54** The Principles and Policy Guidance similarly recognise the importance of strengthening regulation of polluting industries and businesses, as well as creating avenues for children to seek redress from businesses that infringe their rights. For example, the Principles and Policy Guidance recommend that States strengthen the monitoring and enforcement of compliance with environmental laws and regulations, adopt and strengthen penalties for polluters and other entities that violate children’s rights to a healthy environment.¹¹¹

The role of civil society organisations (CSOs)

- 55** CSOs include *‘NGOs and any other associations or organizations that are non-profit and independent from the State and that act in an organized way to promote common interests’*.¹¹² As community representatives, CSOs play an essential role in both supporting children and youth to advocate and defend their climate and environmental rights, as well as by mobilising public opinion and decision-makers to effect policy change.¹¹³
- 56** The Principles and Policy Guidance recognise the important role of CSOs in facilitating opportunities for children and youth to participate in decision-making processes and community initiatives related to their rights.¹¹⁴ Central to this role is promoting children’s access to information about their rights, such as by supporting the development of school and community education programmes.¹¹⁵ Additionally, CSOs are integral to providing safe advocacy platforms for children and youth to share experiences, build movements and take collaborative action to defend their climate and environmental rights,¹¹⁶ including by supporting children to make submissions to government, bring legal actions, and pursue international avenues when necessary.¹¹⁷ The Principles and Policy Guidance further recommend that CSOs advocate at local and national levels for the safety and health of children, by protecting against pollution, loss of biodiversity, and climate change.¹¹⁸

Barriers to justice for children

- 57** Children face unique barriers to access justice, including:
- (a)** children lack legal standing in most jurisdictions to commence legal proceedings until they reach the legal age of majority;
 - (b)** access to justice for children often depends on support provided by adults, including an adult legal representative to pursue legal remedies on their behalf;
 - (c)** the costs of pursuing a legal remedy can be prohibitive for children;
 - (d)** children may fear that making complaints will give rise to harassment, abandonment, stigmatisation or personal or family reprisals;
 - (e)** children may experience difficulty in understanding the legal and justice systems;
 - (f)** the justice system can be an intimidating place for children;
 - (g)** in some parts of the world, it is not socially acceptable for children to make complaints; and
 - (h)** there is sometimes a lack of training and capacity amongst the judiciary and judicial system to attempt to hear cases which involve children.
- 58** The Committee on the Rights of the Child has recognised additional structural challenges to children accessing justice in cases involving business entities.¹¹⁹ These difficulties are particularly acute for children belonging to marginalised and disadvantaged groups, as well as younger children.¹²⁰
- 59** Accordingly, the concept of children’s access to justice can be broadly understood as focusing upon a just and timely access to legal remedy, which can occur through both litigious and non-litigious means. Alongside the obligations of States, businesses and CSOs can also play a role in safeguarding children’s access to justice in the context of their rights to a safe, clean, healthy and sustainable environment.

5.2 Legal empowerment theory

Historical development of legal empowerment theory

- 60** The concept of “legal empowerment” arose in the context of international development and the empowerment of poor and other marginalised communities. The term was first coined by Stephen Golub as a counterpoint to the “rule of law orthodoxy”, which Golub argues focuses too much on top-down, State-centred approaches to development that focus on the role of law reform and government institutions to alleviate poverty by providing a business-friendly climate.¹²¹
- 61** In contrast, Golub’s legal empowerment approach is a bottom-up process comprising: “the use of legal services and related development activities to increase disadvantaged populations’ control over their lives”.¹²² Under Golub’s formulation, a legal empowerment strategy involves:
- (a)** an emphasis on strengthening the roles, capacities and power of disadvantaged groups and civil society;
 - (b)** refocusing attention upon administrative agencies, local governments, informal justice systems, the media, and other more local and grassroots institutions and processes to advance the rights and wellbeing of the poor, rather than narrowly focusing on the justice sector;
 - (c)** building partnerships between civil society and the State where there is genuine openness to reform on the part of governments, agencies or state personnel; and
 - (d)** greater attention to domestic ideas and initiatives, or experience from other developing countries, rather than Western imports.¹²³
- 62** Building upon Golub’s earlier work, the 2008 report of the Commission on Legal Empowerment of the Poor (**CLEP**) advanced a framework for the concept, which incorporates four key pillars, including access to justice and the rule of law.¹²⁴ The
- CLEP report also outlines strategies for creating affordable, inclusive and fair justice, including enabling self-help with information and community organising; broadening access to legal services for the poor; reducing transaction costs; and improving informal and customary dispute resolution.¹²⁵
- 63** The 2009 report of the UN Secretary-General on *Legal Empowerment of the Poor and Eradication of Poverty* echoed key themes of the CLEP report by framing legal empowerment within a human rights-based approach and defining legal empowerment as: “the process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors”.¹²⁶ The Secretary-General noted that legal empowerment also “recognises that every individual must have access to justice, including due process and remedies and that action must be taken to eliminate discrimination”.¹²⁷ The Secretary-General adopted a broader view of the concept of legal empowerment, including by assigning greater importance to the rights of women and children.
- 64** While the concept of legal empowerment continues to evolve and develop, the Secretary-General’s formulation of legal empowerment is significant in that it is the most authoritative and detailed guidance on legal empowerment within the UN system and its institutions.
- Case study: legal empowerment in action**
- 65** Namati, a primary justice services organisation founded in 2012,¹²⁸ has pioneered a legal empowerment approach to build capacity among disadvantaged communities to advance justice, by training community paralegals and building a network of grassroots justice defenders in the form of a global ‘legal empowerment network’.
- 66** At Namati, community paralegals are legal workers who work directly with people affected by injustice,¹²⁹ to help them understand and use the law themselves, as well as use tools like mediation, organising, advocacy and education to seek concrete solutions to rights violations and injustice.¹³⁰ Namati and its partners train community

paralegals to provide free legal assistance to local communities across 6 countries¹³¹ on matters such as women’s empowerment, prisoner rights, health, citizenship and environmental justice.¹³²

- 67** The organisation’s approach acknowledges that while the law is intended to advance justice, it can also threaten marginalised and vulnerable groups, since individuals who do not understand their rights can be vulnerable to abuse, including loss of their lands and livelihoods.
- 68** Namati’s theory of legal empowerment begins at the grassroots level, where legal methods are developed and tested by legal advocates, community paralegals and related organisations. Members are part of a global network that meets to discuss issues and campaign for change, on a national, regional and global level. National and global coalitions subsequently advocate for large-scale structural change based on grassroots experience.¹³³
- 69** The organisation’s legal empowerment network is the largest community of grassroots justice defenders in the world, bringing together 11,218 individuals from over 170 countries. Through these exchanges and access to online platforms, network members are able to share their experiences, as well as access learning opportunities through webinars and legal empowerment leadership courses. Members also have access to practical resources such as free training materials, monitoring and evaluation tools, case management forms and academic research.¹³⁴

Core elements of legal empowerment

- 70** Section 5.2 indicates that there is consensus on four core elements of legal empowerment. We explain below how those elements relate to the legal empowerment of children to advance climate and environmental justice:
- (a) A broad understanding of law** – legal empowerment acknowledges a broader use of law beyond legislation and court rulings. It acknowledges the significance of regulations, norms, ordinances, processes, agreements and traditional justice systems that constitute the law,



as well as the impediments to achieving access to justice for disadvantaged or vulnerable groups.

- (b) Focus on the most disadvantaged or vulnerable groups** – legal empowerment takes a bottom-up approach which focuses upon the most disadvantaged or vulnerable groups. Accordingly, legal empowerment efforts involve legal services and efforts that aim to have proper laws implemented by, or for, disadvantaged or vulnerable groups.
- (c) Strengthening individual agency** – legal empowerment aims to increase people’s control over their lives and the realisation of their rights. It is both a process and a goal.
- (d) Capacity building** – the bottom-up nature of legal empowerment means that it aims to build capacity at a grassroots level for individuals to act independently to know, use and shape the law and legal processes. Such capacity building can involve the building of networks and assistance from external actors.

- 71** Building upon these conceptual foundations, we locate the core elements of legal empowerment within the context of children’s rights to a safe, clean, healthy and sustainable environment and the advancement of climate and environmental justice, and adopt the following definition of legal empowerment:

the use of law, legal processes and non-legal processes to specifically strengthen the capacity of disadvantaged children to access and enjoy their rights to a safe, clean, healthy and sustainable environment.



5.3 Environmental justice and climate justice

72 The concepts of climate justice¹³⁵ and environmental justice¹³⁶ are closely linked. Like the concept of legal empowerment, climate justice and environmental justice similarly focus on addressing injustices faced by vulnerable and marginalised populations. While environmental justice generally refers to the process of securing justice for those who have suffered injustice due to environmental abuses, the concept of climate justice frames global warming as an ethical and political issue by recognising that climate change can have greater impact on those who have least contributed to climate change.

73 Climate and environmental justice initiatives frequently demonstrate a legal empowerment approach, being spurred by grassroots initiatives, that build a network of members supported by legal advocates and organisations to take legal and policy action in support of their climate and environmental rights. From the experience of these grassroots organisations, national and global coalitions can then advocate for large-scale structural change. Each of the Case Studies examined in this Report includes a grassroots element, whereby children, young people and civil society organisations have taken action either within or adjacent to the formal justice system, through litigious or non-litigious means, to address climate change and environmental issues that directly affect them and their communities.¹³⁷

74 In the international human rights system, the July 2021 Council resolution on the topic of Human Rights and Climate Change has cast a spotlight on climate justice. The Council noted *'the importance of some elements of the concept of "climate justice" when taking action to address climate change'*¹³⁸ and recognised *'the adverse effects of climate change are felt most acutely by those segments of the population that are already in vulnerable situations owing to factors such as...age... or minority status'*.¹³⁹

75 Some of the clearest expressions of climate and environmental justice are seen in the growing body of litigation concerning climate change and environmental issues. For example, in the ground-breaking case of *Urgenda Foundation v State of the Netherlands*, the environmental NGO Urgenda Foundation and 900 Dutch citizens successfully argued that the Dutch State was taking inadequate action to limit its greenhouse gas emissions.¹⁴⁰ The *Urgenda* case precipitated similar climate change lawsuits around the world, including the recent Australian case of *Sharma v Minister for the Environment* (as discussed in Schedule 1 of this Report).¹⁴¹

76 Beyond national court rooms, cases of environmental and climate injustice have also been reported to intergovernmental bodies, such as the recent complaint of 16 young petitioners to the Committee on the Rights of the Child against France, German, Turkey, Brazil and Argentina.¹⁴²

5.4 Intergenerational equity

77 Intergenerational equity refers to the principle that each generation holds the Earth in common with members of the present generation and with other generations, past and future.¹⁴³ It expresses a concept of fairness among generations in the use, conservation and stewardship of the environment and its natural resources.¹⁴⁴

78 The concept of intergenerational equity can be traced back to the 1987 Brundtland Commission Report, which states that: *“States shall conserve and use the environment and natural resources for the benefit of present and future generations.”*¹⁴⁵ This formulation of intergenerational equity has been expressly acknowledged in the Paris Agreement, which acknowledges that *“Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on... intergenerational equity.”*¹⁴⁶

79 The Glasgow Climate Pact agreed at the 2021 United Nations Climate Change Conference (COP26) echoes this language. It acknowledges that when taking action to address climate change, States should respect, promote and consider their respective obligations on human rights, the rights of children, and intergenerational equity.¹⁴⁷ The Glasgow Climate Pact also recognises the *“important role of indigenous peoples, local communities and civil society, including youth and children, in addressing and responding to climate change.”*¹⁴⁸

80 The concept of intergenerational equity and environmental justice is well established in the Region. As early as 1994, the Supreme Court of the Philippines ruled in favour of a class of plaintiffs consisting of children and their representatives that the Philippine State has an intergenerational responsibility to maintain a clean environment.¹⁴⁹



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6 Key barriers to the legal empowerment of children in the Region



- 81** Children and young people in the Region face several barriers to accessing justice and legal empowerment. Some major challenges include:
- (a) socio-economic factors, including access to education and family support;
 - (b) access to legal assistance and State-funded legal aid;
 - (c) access to technology and the internet;
 - (d) the scarcity of specialised human rights institutions for children throughout the Region;
 - (e) access to international forums; and
 - (f) the impact of the COVID-19 pandemic.

6.1 Socio-economic barriers to legal empowerment

- 82** Access to justice and legal empowerment are frequently privileges available to very few marginalised or disadvantaged communities. In most of the Case Studies featured in this Report, young leaders and activists tend to be highly proficient in English, have full access to secondary and/or tertiary education, and are well-versed in using social media and technology. While such opportunities have provided these young activists with a platform to reach a broader, global audience to highlight environmental and climate issues affecting them and their communities (including less privileged groups), many children in the Region remain voiceless as a result of their socio-economic circumstances.

- 83** In some circumstances, like those demonstrated in the *Minors Oposa v Factoran* case in the Philippines, children may benefit from the support and advocacy of educated family members, who can advance the environmental rights of their children, either indirectly (for example, through sponsoring or supporting advocacy activities), or directly (for example, by acting as a litigation representative, or even as the lawyer for the children themselves).
- 84** Accordingly, factors such as literacy (in particular, proficiency in English, access to a rights education in schools, and technological literacy), socio-economic status, family background, and access to funding become critical determinants of whether young people are able to advance their individual and collective rights. Indeed, 63% of responses to the survey conducted in relation to this Report¹⁵⁰ indicated that children and young people in the Region do not have enough money, time or human resources to take action on climate or environmental issues.



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6.2 Access to legal assistance and legal aid

- 85** Access to legal assistance and pro bono legal aid is critical to ensuring access to justice and legal empowerment of vulnerable groups like children. Access to legal aid for civil and administrative matters, not just for criminal matters, helps to empower poor and marginalised populations who would otherwise be prevented from accessing legal assistance due to the costs of legal representation.
- 86** Where pro bono support is limited, legal aid budgets are constrained, or access to legal aid is restricted (for example, by means-testing of applicants or limited to certain legal proceedings such as criminal trials) legal assistance provided by community paralegals,¹⁵¹ law students and other quasi-legal actors expands access to justice and legal knowledge beyond constituencies that have the means and opportunity to access professional legal services. As noted at paragraph 66 above, access to 'community paralegals' can also improve rights literacy and education among more remote and vulnerable communities.
- 87** A 2016 report by the UNDP and the UNODC found that demand for legal aid in civil cases is largely unmet in most countries around the world.¹⁵² Moreover, while there is high demand for legal aid in relation to public interest litigation or class actions concerning issues such as environmental protection, few developing States report that State-funded legal aid is available for such cases.¹⁵³
- 88** Access to state-funded legal aid is a mixed picture across the Region. Countries such as Cambodia and Thailand lack legal aid legislation.¹⁵⁴ Moreover, legal aid is often provided by non-governmental organisations or private lawyers working on a pro bono basis.¹⁵⁵ Likewise, legal aid services are often centralised in major population centres, leaving rural areas with more sporadic access to legal services.
- 89** Viet Nam provides state-funded legal aid at a national, regional, and local level. In 2015, 47% of surveyed people received legal assistance when seeking to resolve a conflict with someone who refused to fulfill a contract or pay a debt in the past 3 years.¹⁵⁶ State-funded legal aid was provided in roughly 2% of all civil and administrative cases filed in court, and 7% of criminal cases in 2013.¹⁵⁷ In the Pacific Islands, a majority of legal aid services are provided from the capital city of most populated islands.¹⁵⁸ Legal aid for civil cases tends to be deprioritised compared to criminal cases,¹⁵⁹ which can lead to legal aid resources being disproportionately invested in protecting the rights of men (who are typically overrepresented in criminal hearings), at the expense of the rights of women and children.¹⁶⁰
- 90** Noting the diverse causes of action that underlie recent global climate change litigation,¹⁶¹ it is also unclear whether State-funded legal aid services will be available to children and young people pursuing more novel civil claims in relation to advancing climate and environmental justice. With scarce resources and high demand for legal



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support among disadvantaged populations, publicly-funded legal aid institutions may also be wary of bringing such cases if they risk becoming highly politicised.

- 91** Responses to the survey conducted for this Report indicate an under-utilisation of legal avenues to act on climate change and environmental issues, with only 25% of respondents recording that they had received assistance from people in the legal profession, and 50% of respondents recording access to lawyers as a challenge to taking action on climate change.
- 92** As seen in several of the Case Studies,¹⁶² NGOs, law students and private law firms acting on a pro bono basis may step in to fill the legal representation gap. For example, the campaign for an International Court of Justice Advisory Opinion has been pioneered by law students at the University of the South Pacific and the campaign has generated significant educational resources.¹⁶³ However, there are inevitably limitations to the resources and support that such organisations can provide. In determining whether to represent a specific child or group of children in a climate or environmental lawsuit, it is also possible that such actors may be more informed by strategic considerations of effecting legal reform through litigation, rather than purely achieving justice for individual children.
- 93** Dovetailing with issues of relative privilege and opportunity to seek access to justice (discussed at part 6.1 above), the Case Studies also indicate that young people with established profiles as activists may find it easier to access legal assistance. In the *Sharma v Minister for the Environment* case, the plaintiffs are all established young leaders in the School Strike for Climate / Fridays for Future movement in Australia. Likewise, the child complainants in the Complaint to the Committee on the Rights of the Child include some of the world's most prominent young climate activists, such as Greta Thunberg and Alexandra Villasenor.

6.3 Access to technology and the internet

- 94** A consistent feature across the Case Studies is the ubiquitous role of the internet and social media. Online platforms have allowed young people to advocate and broadcast their grievances concerning climate change and environmental issues not only to a broader domestic audience, but also to link up to transnational movements and initiatives.
- 95** Likewise, access to technology and the internet has allowed young people throughout the Region to be exposed to the activities of young changemakers like Greta Thunberg and Vanessa Nakate, creating global momentum for a youth-led climate and environmental justice movements. The internet has also functioned as the core medium for groups like Klima Action Malaysia to spread awareness around climate and environmental issues and to empower other young people through access to climate and environmental educational resources.
- 96** According to World Bank statistics, the Region has one of the higher rates of internet penetration in the world: approximately 70% of people in East Asia and the Pacific have access to the internet.¹⁶⁴ However, these regional statistics belie a digital divide within the Region, and within countries themselves. While the Republic of Korea, Japan, Hong Kong SAR, China, and Malaysia record rates of internet usage above 90%, less than 20% of people in Pacific Small Island Developing States (**PSIDS**) like Papua New Guinea, the Solomon Islands and Kiribati have internet access. Further, even within highly connected countries like Malaysia, there is a noticeable urban-rural divide: while children in Kuala Lumpur may enjoy some of the fastest internet in the world, some parts of Sarawak in East Malaysia have no access to internet services.¹⁶⁵

6.4 Scarcity of specialised human rights institutions for children in the Region

97 The Committee on the Rights of the Child has acknowledged the important role that independent national human rights institutions play in promoting and ensuring the implementation of the CRC rights.¹⁶⁶ Many countries have established specialised ombudspersons for children and children’s rights commissioners, to promote the interests of children and to improve their access to rights.¹⁶⁷

98 However, there have been few such specialised national children’s rights institutions established across the Region.¹⁶⁸ At a regional level, the ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children was established in 2010 as an intergovernmental human rights institution to promote and protect the fundamental rights of women and children. However, the Commission’s mandate excludes a specific function to receive and investigate complaints of rights violations from citizens of ASEAN member States.¹⁶⁹

99 Recent developments in Malaysia do, however, suggest positive trends towards the increased establishment of specialised children’s rights institutions. In August 2019, Malaysia appointed its first Children’s Commissioner.¹⁷⁰ The Office of the Children’s Commissioner (**OCC Malaysia**) was subsequently established in May 2020 as a special division within the existing structure of the Human Rights Commission of Malaysia (also known as ‘**SUHAKAM**’).¹⁷¹ The SUHAKAM is empowered to inquire on its own motion or on receipt of a complaint made by an aggrieved person or group, into any allegation of infringement of human rights of such person or group.¹⁷²

100 To date, OCC Malaysia’s activities have focused upon issues such as the rights of stateless children, education, child marriage, sexual health education and safety, and complaints and monitoring. The Commissioner has also contributed to a recent UNICEF report on the impact of climate change on children in Malaysia.¹⁷³



OCC Malaysia also intends to establish a Children’s Consultative Council in the near future, which will consist of children and will inform OCC Malaysia on problems faced by children and their grievances.¹⁷⁴

101 Despite these developments, the relative scarcity of specialised children’s rights institutions and formal complaint mechanisms for violations and grievances across the Region mean that there are fewer opportunities for children and young people to pursue non-judicial or quasi-judicial remedies for rights violations outside of the formal justice system. This limits the options available to children and young people to seek remedies for violations of their rights.

102 The absence of such institutions also creates a systemic barrier for the legal empowerment of young people in pursuing climate and environmental justice. Likewise, without a network of non-judicial or quasi-judicial institutions at the national or sub-national level appropriately resourced to receive, investigate and address complaints from children, young people have few options other than to seek remedies through the formal justice system (and confront the systemic barriers that exist in such forums) or through protesting or mobilising in the public sphere.

6.5 Barriers to accessing international forums

- 103** In the absence of access to national forums, young people may look to international forums like the International Court of Justice and the Committee on the Rights of the Child for redress. While the norm-creating role of these institutions in the global context of climate change and environmental degradation is attractive for activists seeking systemic change, there are considerable barriers to accessing such institutions.
- 104** As discussed in Schedule 1 below, the recent Complaint to the Committee on the Rights of the Child was ultimately considered inadmissible, as the Committee found that the child complainants had not satisfied the threshold test under the Optional Protocol to first exhaust all domestic remedies. To some extent, the decision of the Committee does provide a roadmap for children to bring future complaints against States that they are not citizens of, on the grounds that there is causal link between a State's emissions and harm suffered by children within and beyond its national borders. However, the precondition that complainants must first exhaust all domestic remedies requires children and their supporters to expend significant time and resources to both ascertain the full extent of domestic remedies available, and then pursue these remedies.
- 105** Similarly, in seeking access to international courts and tribunals like the International Court of Justice, young people are required to build sufficient international momentum and a large enough public profile to gain the support of enough nations in the General Assembly to provide the ICJ with a mandate for issuing an Advisory Opinion. States like Vanuatu may be able to act as a champion for these campaigns and leverage their position in the international system to build a coalition of nations in support of such moves; however, this is not always guaranteed.

6.6 COVID-19

- 106** The advent of the COVID-19 pandemic has exacerbated the barriers to children accessing justice and seeking redress for climate and environmental issues. As shown in the Klima Action Malaysia, Bye Bye Plastic Bags, and Mongolia air pollution monitoring cases, much youth activism and mobilisation has been forced to pivot away from protests and other in-person activities in the public sphere to online platforms. In many jurisdictions, stay-at-home orders and other public health measures designed to promote social distancing have discouraged or even penalised public assembly, forcing young activists to re-think strategies for advancing climate and environmental justice.
- 107** At the same time, the social and economic disruption caused by the pandemic has compounded the ongoing impacts of climate change and environmental degradation on children in the Region. In 2020, an additional 22 million children in Southeast Asia and the Pacific fell into poverty, while 325 million children have had their educations disrupted through school closures.¹⁷⁵ The transition to online learning has prevented many children from accessing education simply for lack of access to technology and a reliable internet connection.
- 108** While COVID-19 has been a major disruptor to the lives of children and young people throughout the Region, for those who do have access to technology and the internet, the pandemic has also created new opportunities for mobilising and pursuing climate and environmental justice through online platforms and social media, as discussed in section 7.2 below.





PART IV

7 Key opportunities for legal empowerment in the Region



109 Despite the barriers faced by children and young people in the Region, there are also many opportunities for empowerment to advance climate and environmental justice, including through:

- (a) the role of the media to provide awareness of environmental and climate justice causes;
- (b) the role of social media to build a movement for change;
- (c) the ability of young people to empower other young people;
- (d) emerging trends of positive court judgments in favour of climate and environmental rights;
- (e) the role of lawyers and people with legal training in supporting young people;
- (f) the role of non-lawyers in facilitating access to justice;
- (g) the role of States in facilitating access to international judicial forums;
- (h) the role of international organisations and foreign aid donors in supporting youth-led climate and environmental justice projects; and
- (i) the role of businesses in supporting youth-led climate and environmental justice initiatives.

7.1 The role of the media

110 The media can play a key role in highlighting and raising awareness of climate and environmental justice causes. As seen in the case of the Klity Creek litigation, persistent media coverage of such issues can maintain pressure on key stakeholders and decision-makers to take substantive action to address environmental and climate change concerns of affected groups, such as children. In this case, media outlets like the Bangkok Post consistently reported on the environmental degradation of Klity Creek and effects on the local population over a period of over 20 years, which created pressure upon government departments to implement pollution control measures, as well as a platform for the local community to push for more robust actions.¹⁷⁶



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7.2 Social media

- 111** It is clear from the Case Studies that social media can provide an important platform for legal empowerment. For example, Klima Action Malaysia has a diverse social media strategy that includes creating infographics to educate children and young people about climate change issues, a pocket guide to climate justice in Bahasa Melayu, a bilingual blog that analyses a range of climate and environmental topics, and producing a podcast about climate change in Malaysia.¹⁷⁷
- 112** As the COVID-19 pandemic has forced a retreat from public spaces to online platforms, young people in the Region have also pivoted away from in-person strategies like street protests to innovative online advocacy. Klima Action Malaysia replaced its in-person climate strikes with online strikes. Its most recent campaigning against the de-gazettement of Kuala Langat North Forest Reserve adopted an almost completely online strategy to pressure local politicians to reject proposals that would have removed more than 1,000 hectares of ancient forest from national protection.¹⁷⁸ Likewise, the founders of Bye Bye Plastic Bags have continued to scale up their advocacy activities through an online learning forum called YOUTHTOPIA to empower children and young people to learn about social mobilisation and advocacy strategies.¹⁷⁹ They have also created online toolkits for other young activists to start their own anti-single use plastic bag campaigns.
- 113** Further, the survey conducted for this Report confirms the power of social media to educate and inspire action amongst children and young people in the Region. Seventy-five percent of survey participants learned about their legal environmental rights from online materials, while 81% confirmed that learning about the climate crisis online prompted their desire to act upon climate and environmental issues.

7.3 Youth empowering other youth

- 114** As the above discussion of Bye Bye Plastic Bags indicates, young people in the Region are playing an important role in empowering other young people by sharing their experiences of activism and creating practical guidance for how to take action to advance climate and environmental justice.
- 115** Similarly, through the Pacific Islands Students Fighting Climate Change (**PISFCC**) campaign for an International Court of Justice Advisory Opinion, university students and graduates of the University of the South Pacific are sharing legal knowledge, educating younger people about climate change, and encouraging activism in young people to advance climate justice. PISFCC has created various awareness campaigns, including: a photo contest for creative work by young people across the Pacific Islands; an art competition based on the themes of climate change and human rights called “Reimagining Pacific Futures; an education campaign for climate activism in the Solomon Islands; as well as social media campaigns designed to highlight the voices of young people in the Pacific.¹⁸⁰
- 116** The findings of the survey for this Report confirmed the importance of civil society activism and organisations led by children and young people in creating opportunities for legal empowerment. From a survey pool of young people aged 16-24, 69% reported that they had started a group aimed at tackling environmental issues and climate change.

7.4 Positive court judgments

- 117** The Case Studies analysed in this Report also clarify that there is a trend of positive jurisprudence across the Region that supports the claims of young people in relation to climate and environmental justice issues. Promisingly, these judgments have occurred in the highest courts within national legal systems, and therefore have strong normative and precedential value for future claims by children and young people.



- 118** The ground-breaking judgment of the Philippines Supreme Court in 1993 in the case of *Minors Oposa v Factoran* was the first in the world to explicitly recognise the rights of children to a healthy environment.
- 119** In a similar positive development for environmental activism in the region, in 2017, the Supreme Court of Thailand ruled in favour of a group of ethnic Karen villagers who had been affected by illegal lead pollution of Klity Creek, finding that the company responsible for the pollution owed the plaintiffs a duty to rehabilitate the creek at their own expense.
- 120** More recently, on 27 May 2021, the Federal Court of Australia ruled in favour of a group of youth climate activists in *Sharma v Minister for the Environment (No 2) [2021] FCA 774*. The Court found that a novel duty of care existed for the Australian Commonwealth Minister for the Environment to protect Australian children when deciding whether or not to approve a coal mine expansion project. As detailed in Schedule 1 of this Report, this judgment was subsequently overturned on appeal. This does not in itself rule out the possibility of future plaintiffs establishing the existence of a unique climate-related duty of care under Australian law.

7.5 Legal assistance from lawyers and other people with legal expertise

- 121** It is clear from the Case Studies that non-State actors are playing an important role in facilitating access to formal legal processes across the Region. Individuals with legal training or expertise have played a facilitative role in not only educating young people about their rights, but also in for access to judicial and quasi-judicial processes. Such actors range from well-resourced international law firms,¹⁸¹ to local environmental legal networks,¹⁸² to law students and recent university graduates.¹⁸³
- 122** Importantly, this trend occurs not only in high income economies like Australia, but also in upper middle income economies like Thailand. Organisations like Equity Generation Lawyers in Australia¹⁸⁴ and EnLAW in Thailand¹⁸⁵ have respectively formed for the express purposes of advancing strategic climate change litigation, and advocating for the environmental rights of people and communities.

7.6 The role of non-lawyers in facilitating access to justice

- 123** The Case Studies demonstrate that adults do not require legal qualifications to be able to facilitate children's access to environmental and climate justice. For example, adults without legal qualifications can still act as a 'litigation representative' (also known as a 'litigation guardian') for children and young people, who are generally not legally recognised to start legal proceedings on their own. While rules differ between countries, a 'litigation representative' typically acts in the place of the child or young person and is responsible for the conduct of proceedings.
- 124** In the case of *Sharma v Minister for the Environment*, a Roman Catholic nun with a history of championing social justice causes acted as a litigation representative for the child plaintiffs. Because the plaintiffs were underaged, they would otherwise lack standing, or legal recognition, to commence and conduct legal proceedings.
- 125** Similar mechanisms for adult litigation representatives to act on behalf of child claimants exist in other legal systems in the Region. For example, in the case of *Minors Oposa v Factoran*, many of the plaintiffs were represented by their parents in the proceedings.

7.7 The role of States in facilitating access to international forums

- 126** While there are notable barriers to children accessing justice through international judicial forums, the support of the Government of Vanuatu for the campaign of PISFCCC students (for the UN General Assembly to request an Advisory Opinion from the International Court of Justice regarding States' obligations in relation to human rights and climate change), demonstrates that States can play a key role in facilitating children's access to justice.

7.8 The facilitative role of international organisations and foreign aid donors

- 127** International organisations and foreign aid donors are also creating opportunities for legal empowerment of young people in the Region. For example, the youth-led air pollution mapping project in Mongolia (as discussed in Schedule 1) is supported by UNICEF, the Scouts Association of Mongolia, and the Swiss Agency for Development and Cooperation, among other national and international partners. Through this project, youth volunteers have taken an active role in recording and educating the public about air pollution, as well as participating in policymaking processes to develop action plans to address air pollution.
- 128** As explored further in Part VI of this Report, intergovernmental organisations are well placed to facilitate the legal empowerment of children and young people, given their access to and relationships with a host key stakeholders, including policy-makers, civil society organisations, the legal profession, and children and young people engaged in climate and environmental activism.¹⁸⁶

7.9 The role of business

- 129** While there are instances where businesses have been a source of environmental harm, such as in the Klity Creek case, the Case Studies also demonstrate that business can play a key positive role to support youth empowerment. For example, the Bye Bye Plastic Bags campaign in Indonesia is sponsored by local and international businesses acting together with non-profit organisations.





8 Risks faced by children when advancing climate and environmental justice causes



130 For children and young people in the Region, advancing climate and environmental justice causes is not a risk-free endeavour. Although far from exhaustive, key risks that young people in the Region face when taking action on climate and environmental causes include:

- (a) cyber harassment;
- (b) violence; and
- (c) judicial or legal harassment.



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8.1 Cyber harassment

131 In many countries, climate change and environmental issues can be politically divisive topics. With much activism being conducted online through social media platforms, young climate and environmental rights activists may experience online harassment and ‘trolling’. Depending on the identity of individual activists, young people advocating for climate and environmental justice may experience racialised, gender-based or otherwise identity-based online abuse. For example, Greta Thunberg has been the target of sexualised and gender-based online harassment.¹⁸⁷

132 In a similar vein, activists involved in Klima Action Malaysia have reported facing highly personalised online abuse and harassment, including disclosure of their personal photographs and personal information.¹⁸⁸ Cyberbullying and personal threats have impacted the mental health of members of the organisation.

8.2 Risk of violence

133 In some jurisdictions, environmental activism can attract the risk of physical violence. Children have been recognised as one of the groups targeted in violent attacks and reprisals against environmental defenders. States have been urged by the Council to develop and appropriately resource protection initiatives for human rights defenders, including taking into account the intersectional dimensions of violations and abuses against children.¹⁸⁹



134 Environmental human rights defenders face an elevated risk of violence in relation to their advocacy activities. A landmark study by Global Witness in 2014 found that at least 908 people have been killed globally as a result of protecting their rights to land and the environment during the period from 2002 to 2013.¹⁹⁰ More than 90% of these deaths occurred in just nine countries, including Cambodia, the Philippines and Thailand.¹⁹¹ Resource scarcity and rising inequality in many societies is fuelling violence against environmental defenders, while more and more communities are finding themselves forced to act to defend their environments from pollution or unsustainable exploitation.¹⁹²

135 Reports suggest that in recent years, the risk of violence to environmental human rights defenders is increasing globally. In 2020, Global Witness recorded 227 deaths of environmental defenders around the world.¹⁹³ These figures included 29 people in the Philippines, 3 in Indonesia, 2 in Thailand and one person in Kiribati.¹⁹⁴ The sectors with the highest documented number of deaths were: logging, water and dams, mining and extraction, illegal crop substitution, and agribusiness.¹⁹⁵ Indigenous people were disproportionately represented in the number of documented deaths, while victims also included state officials or park rangers working to protect the environment, including in the Philippines and Thailand.¹⁹⁶

8.3 Legal consequences of taking action to advance climate and environmental justice

136 The term ‘judicial harassment’ (otherwise known as ‘legal harassment’) refers to the use of the legal and judicial system to intimidate or silence critics and activists, including via lawsuits, criminal prosecutions, and other legal tactics such as abusive or vexatious subpoenas, arbitrary detention or arrest, or unfair trials by public or private actors.¹⁹⁷

137 “Strategic lawsuits against public participation” (or **SLAPPs**) are a key example of such harassment. SLAPPs are lawsuits filed with the intent to intimidate or harass people engaged in acts of public participation, including environmental and climate justice activism.¹⁹⁸ As noted in a report by the Business & Human Rights Resource Centre, SLAPPs “are especially difficult to combat because they masquerade as legitimate legal claims” and “abuse libel or other defamation laws to target valid and protected speech or protest.”¹⁹⁹ Tactics of malicious litigation involve businesses or other actors relying on their relative economic advantage to pressure activists who have limited funding to defend such claims against them.

138 In Southeast Asia, most countries lack a legal definition of SLAPPs and do not prohibit such conduct.²⁰⁰ The Philippines is one of the few countries in the Region that has laws that provide a legal definition for a SLAPP and a rare example of a jurisdiction that has legislated specific anti-SLAPP protections. The Supreme Court's Rules of Procedure for Environmental Cases contain explicit anti-SLAPP provisions, which allow a court to dismiss a case classified as a SLAPP during a summary hearing prior to trial, and allows people asserting their environmental rights to raise the defence that a case filed against them is a SLAPP and should be dismissed.²⁰¹ Likewise, Indonesia has laws

that protect against lawsuits commenced against parties exercising their rights to a healthy environment, and there are movements towards anti-SLAPP legislation in Thailand as well.²⁰²

139 While none of the Case Studies involve SLAPPs or judicial harassment by State authorities, SLAPPs are a notable risk for environmental and climate activism in the Region. The Business & Human Rights Resource Centre has recorded 127 cases of judicial harassment against human rights defenders in Southeast Asia during the period 2015 to 2019, including at least 30 cases of SLAPPs.²⁰³



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PART VI

9 Conclusion and recommendations



- 140** Recommendations in this section follow an analysis of the key challenges, risks and opportunities identified in the Case Studies. They present strategies for using the law, legal processes and non-legal processes to specifically strengthen the capacity of disadvantaged children and young people to access and enjoy their rights to a safe, clean, healthy and sustainable environment.
- 141** These recommendations supplement the Principles and Policy Guidance²⁰⁴ by offering specific guidance for children, young people and their caregivers, civil society organisations, intergovernmental organisations and States to help empower children to advance climate and environmental justice. They acknowledge the bottom-up nature of legal empowerment, by recognising the critical role of civil society and other non-State actors in equipping children and young people with the tools and opportunities to take action on climate change and environmental issues. The recommendations also recognise the unique role of States to enable the legal empowerment of children by addressing the legal, financial and other structural barriers that prevent children and young people from advancing climate and environmental justice.
- 142** As summarised in the table below, the recommendations are targeted towards children and young people, caregivers, civil society actors, intergovernmental organisations and States. They are not intended to be an exhaustive or prescriptive list. The recommendations are aligned to the following four-step legal empowerment strategy:
- (a) Education:** provide children and young people with effective access to education regarding their legal system, and their rights to a safe, clean, healthy and sustainable environment;²⁰⁵
 - (b) Expression:** enable children and young people to express their views freely about climate change and environmental issues that affect them, and to advocate for their climate and environmental rights, both individually and collectively;²⁰⁶
 - (c) Access to remedy:** facilitate children and young people's access to local, national and international judicial and quasi-judicial forums and legal processes, to support their access to legal remedies in relation to climate change and environmental issues;²⁰⁷ and
 - (d) Safety:** foster a child-friendly and safe environment for children and young people to use the law and the legal system, as well as non-litigious strategies, to take action on climate change and environmental issues.²⁰⁸
- 143** These steps aim to provide a pathway from initial rights education and promoting awareness among children and young people about their climate and environmental rights, to supporting children and young people to express their views and to advocate to advance these rights, culminating in facilitating access to remedies to safeguard their climate and environmental rights. Critical to this process is a final step that aims to create a safe environment for children at each stage of legal empowerment, from education through to action.

Recommendations

(a) Education

Recommendations for children, young people and their caregivers

- 1 Learn what action has been taken around the world to advance climate and environmental justice** and how children and young people can become involved. Parents and other caregivers can support self-education, including by asking children and young people what they want to learn about in respect of their climate and environmental rights, and helping with access to resources about climate change, their legal system and children's rights to a safe, clean, healthy and sustainable environment.
- 2 Learn about your legal system**, including legal processes, advocacy and avenues for young people to participate. Visit the courts and legal institutions, their websites, connect with community legal groups and university outreach programmes, and tell your teachers and caregivers what you want to learn about your legal system.
- 3 Connect with youth-led organisations, social media groups and community groups** involved in climate change and environmental initiatives to grow your knowledge on climate and environmental justice causes. Follow climate and environmental activists on social media to learn more about what steps they are taking to promote climate and environmental justice.
- 4 Law students, law graduates and other young people with access to a legal education and training** can share their knowledge and experiences with their community, local schools, youth-led organisations and community groups involved in climate change and environmental issues.
- 5 Schools, teachers and other educators can support learning about climate change, environmental degradation, climate and environmental rights and the legal system** through school lessons, extracurricular activities, and homework assignments, such as research activities (e.g. air pollution monitoring, water quality testing), creating student groups to learn about climate change, environmental protection and national legal processes, and organising excursions (e.g. to courts and tribunals, national parks and conservation areas).

Recommendations

(a) Education

Recommendations for civil society organisations

- 1 Share child-friendly information on children’s climate and environmental rights**, including via schools, learning centres, websites and social media. Showcase the experiences and expertise of children and young people who have participated in advocacy for environmental and climate change issues, highlighting experiences of both litigious and non-litigious approaches. Focus especially on reaching children and young people in remote areas, indigenous communities, and disadvantaged communities.
- 2 Civil society organisations with legal training and expertise can help educate on their legal system**, with a focus on how children and young people can access the legal system, the availability of legal aid and pro bono support, and what options exist for children and young people to access remedies for climate and environmental rights violations. Relevant civil society organisations include legal professional bodies like law societies or bar associations, legal NGOs, legal academic institutions, law students and graduates.
- 3 Educate children and young people on how they can participate in your activities**, including existing movements, campaigns or other action promoting climate and environmental justice.
- 4 Build or connect to a legal empowerment network** to support the education of children, young people and their communities on how to use the law themselves. Involve children and young people in the sharing of experiences across the network, including access to shared resources, learning or training opportunities.
- 5 Civil society organisations with scientific expertise can help educate children and young people on climate and environmental science**, to ensure that children and young people are well informed of the scientific basis for the climate-related and environmental degradation issues that impact their communities.
- 6 Educate and train children, young people and their caregivers on how to monitor and report climate and environmental issues affecting their communities**, including through informal data collection and reporting activities (such as water and air pollution monitoring) and collaborating with formal data collection and reporting activities conducted by government agencies and institutions, such as environmental protection and pollution monitoring authorities.

Recommendations

(a) Education

Recommendations for intergovernmental and international organisations

- 1 Organise and lead local, national and regional education and awareness raising campaigns** for children and young people about climate and environmental justice, legal empowerment, children's rights to a safe, clean, healthy and sustainable environment, and how intergovernmental and international organisations can facilitate children's access to climate and environmental justice.
- 2 Create local, national, regional and international forums for young changemakers to share their knowledge and experiences**, including via capacity building workshops, conferences and working groups. Such forums could focus on the climate and environmental justice issues faced by those children and young people, their advocacy strategies, and the challenges, risks and opportunities they have encountered in pursuing climate and environmental justice causes.
- 3 Partner with young climate and environmental activists, youth-led and environmental organisations, legal organisations, academic institutions and other civil society organisations** to assess and identify key obstacles to, and opportunities for, the legal empowerment of children to access climate and environmental justice at a national and regional level.
- 4 Support and participate in the creation of legal empowerment networks**, including by facilitating the connection of international partners and stakeholders. Intergovernmental organisations like UNICEF can also leverage their experience in developing normative and practical guidance on children's rights to a safe, clean, healthy and sustainable environment, to collaborate with legal empowerment networks in designing and implementing projects aimed at empowering children and young people to access and enjoy their climate and environmental rights.
- 5 Promote the development and deployment of a network of community paralegals** across relevant civil society, government and other relevant stakeholders.

Recommendations for States

- 1 Raise public awareness** of children's rights to a safe, clean, healthy and sustainable environment, and how children and young people can access the legal system to secure legal remedies. National human rights and specialised children's rights institutions can support these efforts through raising awareness of the nexus between their formal complaints mechanisms and access to climate and environmental justice. States are also encouraged to raise awareness through relevant government ministries, regional forums, and the business sector.
- 2 Integrate climate and environmental rights education into the national education curriculum**, which begins early, continue throughout the educational process,²⁰⁹ involves online as well as offline resources, and comprises both formal and informal educational settings, such as schools, at home and in the community.²¹⁰
- 3 Consider investing in programmes to train and develop community paralegals**, especially for communities or regions with limited or no access to legal services

Recommendations

(b) Expression

Recommendations for children, young people and their caregivers

- 1 Share your views, your experiences and what action you are taking on climate and environmental issues**, with your peers, parents and caregivers, both in informal settings at home, at school, in the community and on social media, or in more formal settings like webinars and forums organised by civil society organisations, government agencies or intergovernmental organisations, like UNICEF.
- 2 Share what you have learned** about climate change, environmental degradation, your legal system, and children's rights to a safe, clean, healthy and sustainable environment.

Recommendations for civil society organisations

- 1 Develop and disseminate child-friendly toolkits and guidance materials** on effective advocacy techniques and other strategies for advancing climate and environmental justice through litigious and non-litigious processes. Support the training of children and young people in public speaking, stakeholder engagement and organising campaigns.
- 2 Provide a platform within your organisation and across your network** for children and young people to participate, express their views, share their experiences and the action they are taking on climate and environmental justice causes.

Recommendations for intergovernmental and international organisations

- 1 Integrate child and youth participation in forums directed at climate and environmental justice issues**, including by inviting children and young people to present their views and experiences at public awareness events, workshops and related forums organised by international organisations and their partners.
- 2 Create a network of legal empowerment youth ambassadors** to showcase the efforts of young climate and environmental activists in the Region, to provide young changemakers and advocates with a public platform for sharing their views and experiences on climate and environmental justice causes, and establish a network for children and young people to connect with other young changemakers at a local, regional and international level. Particular attention should be paid to elevating the voices of children from disadvantaged and marginalised communities, including indigenous children, children with disabilities, girls and children from lower socio-economic backgrounds.

Recommendations for States

- 1 Integrate child and youth participation in all public consultations** and related activities concerning climate change, the environment and children's access to the legal system and legal services.
- 2 Ensure consultation with, and integrate inputs from, children and young people** in local and national climate and environmental decision-making processes.

Recommendations

(c) Access to remedy

Recommendations for children, young people and their caregivers

- 1 Consider all available options to secure access to remedy of any violation of children’s climate and environmental rights**, including by seeking advice from legally trained individuals, community groups, civil society organisations and via government resources to assess the viability of both legal and non-legal processes.
- 2 Parents and other caregivers can consider acting on behalf of children and young people**, including by acting as a litigation guardian if there are age-related restrictions that prevent children and young people from taking legal action in their own right.

Recommendations for civil society organisations

- 1 Civil society organisations with legal training and expertise can provide legal advice and representation** to children and young people, amicus curiae briefs in existing litigation, advise on access to legal aid or pro bono services, and advise on the options to seek remedies through relevant judicial, quasi-judicial or non-judicial mechanisms, such as litigation in domestic courts or tribunals, or complaints to international human rights treaty bodies like the Committee on the Rights of the Child.
- 2 Civil society organisations with legal training and expertise can develop a network of environmental lawyers** to share jurisdiction-specific expertise and knowledge regarding legal strategies for advancing children’s climate and environmental justice.
- 3 Advocate for the establishment of independent and specialised national children’s rights institutions** (If no such institutions exist) to accept and investigate complaints regarding violations of children’s rights, including children’s rights to a safe, clean, healthy and sustainable environment.
- 4 Civil society organisations with scientific expertise can assist with legal proceedings** by acting as expert witnesses and informing legal submissions prepared on behalf of children and young people.

Recommendations for intergovernmental and international organisations

- 1 Develop, promote and deliver training programmes targeted at educating the judiciary and judicial officers** about climate change, environmental science and the unique issues faced by children and young people in accessing justice, especially in respect of their climate and environmental rights. Collaborate with States, civil society organisations, academia, the legal profession and other international organisations to deliver such training programmes across the Region.

Recommendations

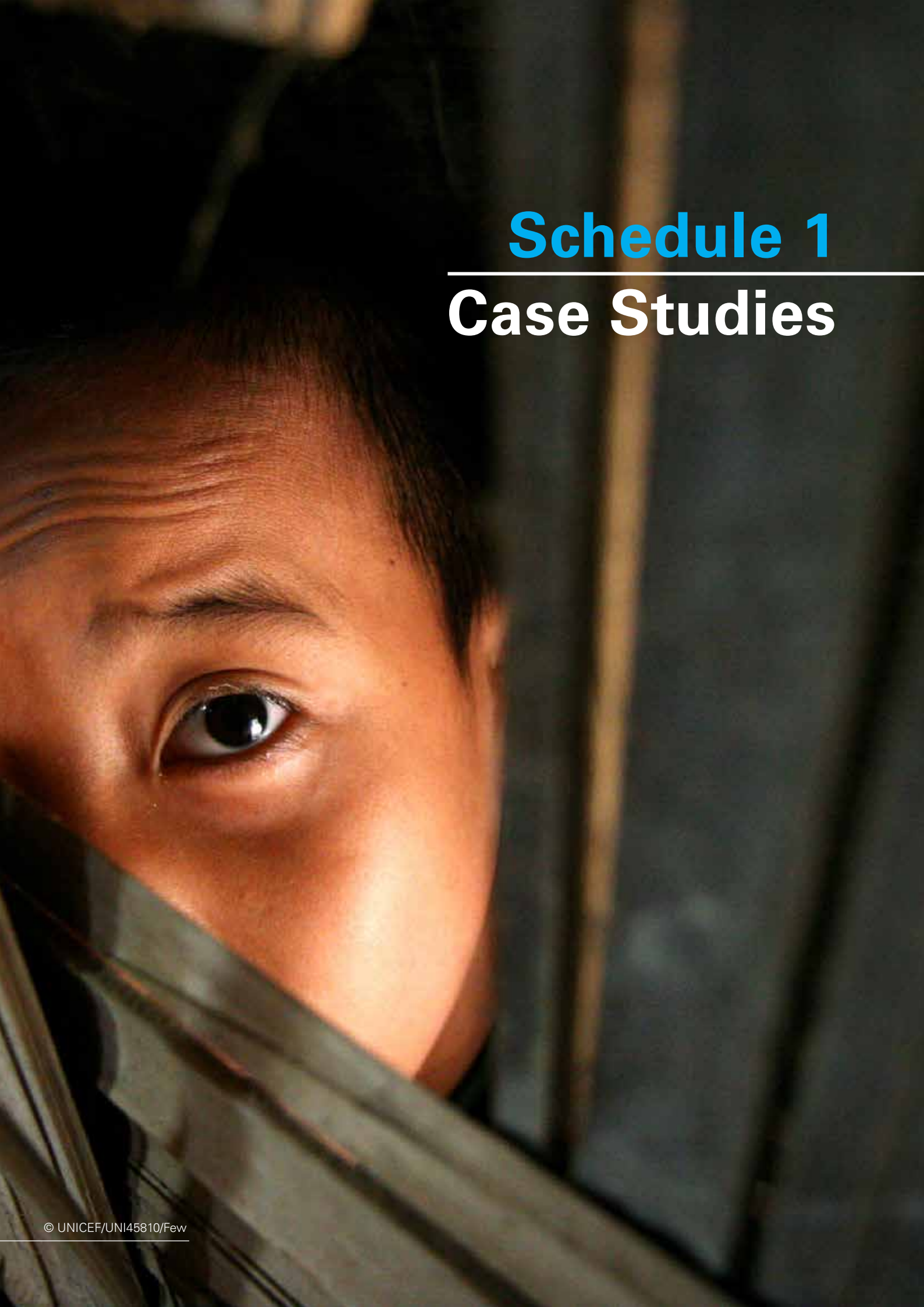
(c) Access to remedy

Recommendations for States

- 1 Establish specialised children’s rights institutions** that are functionally independent, well-resourced and have an independent complaints mechanism for investigating children’s rights violations. Such institutions should be equipped with adequate resources to create dedicated capacity to handle complaints relating to a breach of children’s rights to a safe, clean, healthy and sustainable environment.
- 2 Expand the scope of State-funded legal aid and pro bono legal support services for children, young people and their representatives** to access legal advice and representation not only criminal proceedings, but also civil, administrative and other proceedings where they concern climate and environmental justice issues.
- 3 Ensure the availability of legal aid and pro bono legal support services extends beyond metropolitan areas to rural areas**, in particular to regions with more vulnerable and marginalised communities, such as lower income and indigenous populations.
- 4 Consider championing the climate and environmental justice causes of young citizens in international forums**, for example through issuing a mandate to the International Court of Justice for an Advisory Opinion on clarifying States’ obligations under international law to protect children’s rights to a safe, clean, healthy and sustainable environment.
- 5 Consider acceding to and ratifying the Optional Protocol** to the Convention on the Rights of the Child on a communications procedure to provide children with access to the independent complaints procedure, as overseen by the Committee on the Rights of the Child.

Recommendations	
(d) Safety	
Recommendations for children, young people and their caregivers	<ol style="list-style-type: none"> 1 Support children and young people to manage the risks of online harassment and cyberbullying in relation to online action to advance climate and environmental justice. Parents, other caregivers and young people can share strategies and provide support to children and other young people to mitigate such risks.
Recommendations for civil society organisations	<ol style="list-style-type: none"> 1 Advocate for the enactment or amendment of national laws and procedural rules to provide a clear definition of SLAPPs, a procedure for courts and tribunals to identify SLAPPs, and the power for courts and tribunals to dismiss cases considered to be strategic litigation against children’s public participation. 2 Support children and young people to manage the risks of online harassment and cyberbullying in relation to online action to advance climate and environmental justice.
Recommendations for intergovernmental and international organisations	<ol style="list-style-type: none"> 1 Advocate for the enactment or amendment of national laws and procedural rules to provide a clear definition of SLAPPs, a procedure for courts and tribunals to identify SLAPPs, and the power for courts and tribunals to dismiss cases considered to be strategic litigation against children’s public participation. 2 Raise awareness at an international, regional and national level of the risks of online harassment and cyberbullying for children and young people acting to advance climate and environmental justice.
Recommendations for States	<ol style="list-style-type: none"> 1 Develop anti-SLAPP protections for children and young people who take action on climate change and environmental issues through formal judicial processes in courts and tribunals. This may include: amending or enacting laws to provide a clear definition of a SLAPP and a prohibition on such conduct; providing judicial bodies with clear guidelines for assessing whether legal proceedings constitute a SLAPP; and empowering judicial bodies to dismiss proceedings found to constitute a SLAPP. 2 Consider reviewing national legal rules and procedures from a children’s rights perspective, with a focus on identifying impediments to children accessing the legal system in respect of their climate and environmental rights, and how such legal rules and procedures may be reformed to facilitate access to justice by children and young people. This may include consideration of the legal standing of children, young people and applicable age restrictions; rules and procedures for adults to act as litigation guardians or representatives on behalf of children below the age of legal standing; filing fees and other administrative expenses; witness protection and support; training of the judiciary and judicial officers. 3 Consider developing a cyber-safety strategy to protect children involved in action to advance climate and environmental justice from online harassment and victimisation, including mechanisms to protect children’s privacy and personal data security, as well as mechanisms to accept and investigate children’s complaints of online harassment.





Schedule 1

Case Studies

1 Global – Communication to the Committee on the Rights of the Child



1.1 Overview

Name of case study	<i>Sacchi, et. al. v Argentina, et. al.</i> ²¹¹
Type of strategy adopted	Complaint to intergovernmental organisation
Forum	Committee on the Rights of the Child
Litigious or non-litigious	Litigious
Year commenced	2019
Current status	Decision adopted by the Committee on the Rights of the Child on 8 October 2021 dismissing the complaints as inadmissible
Jurisdiction	International
Target entities	Argentina, Brazil, France, Germany and Turkey
Key child / youth stakeholders	<ol style="list-style-type: none"> (1) Chiara Sacchi, Argentina (17 years old); (2) Catarina Lorenzo, Brazil (12 years old); (3) Iris Duquesne, France (16 years old); (4) Raina Ivanova, Germany (15 years old); (5) Ridhima Pandey, India (11 years old); (6) David Ackley, Marshall Islands (16 years old); (7) Ranton Anjain, Marshall Islands (17 years old); (8) Litokne Kabua, Marshall Islands (16 years old); (9) Deborah Adegbile, Nigeria (12 years old); (10) Carlos Manuel, Palau (17 years old); (11) Ayakha Melithafa, South Africa (17 years old); (12) Greta Thunberg, Sweden (16 years old); (13) Ellen-Anne, Sweden (8 years old); (14) Raslen Jbeili, Tunisia (17 years old); (15) Carl Smith, USA (14 years old); and (16) Alexandria Villasenor, USA (17 years old), <p>(the Complainants).</p>
Number of people involved	16
Environmental issue	Climate change

1.2 What was the case about?

The Complainants lodged a complaint to the Committee on the Rights of the Child against five Group of 20 (**G20**) countries – Argentina, Brazil, France, Germany and Turkey (**Respondent States**) – for alleged violations of their rights under the CRC due to the Respondent States' contributions to climate change. The complaint was brought through the communications procedure under the Optional Protocol.

The Complainants argued that each of the Respondent States had failed to take necessary preventative and precautionary measures to respect, protect, and fulfil their rights to life, health and culture by recklessly causing and perpetuating life-threatening climate change.²¹²

The Complainants explicitly framed the climate crisis as a children's rights crisis, as children are among the most vulnerable demographics to the life-threatening impacts of climate change and will bear the burden of these harms to a far greater extent and for a far longer period than adults. The Complainants contended that each of the Respondent States had failed to uphold its obligations under the CRC, specifically their respective obligations to:

- (a) prevent foreseeable domestic and extraterritorial human rights violations resulting from climate change;
- (b) cooperate internationally in the face of the global climate emergency;
- (c) apply the precautionary principle to protect life in the face of uncertainty; and
- (d) ensure intergenerational justice for children and posterity.²¹⁴

The Complainants made the following arguments in support of their case that the Respondent States were in violation of their obligations under the CRC by perpetuating climate change:

- **Article 3 (bests interest of the child)** – the Complainants argued that by supporting climate policies and delaying

decarbonisation, the Respondent States are shifting the burden and costs of climate change to children and future generations. In so doing, the Respondent States are in breach of their duty to ensure the enjoyment of children's rights for posterity and have failed to act in accordance with the principle of intergenerational equity. They contend that the effects of climate change will nullify the ability of the CRC to protect the rights of any child anywhere and therefore allege that each Respondent State had prioritised short-term economic interests over the best interests of the child, in contravention of Article 3 of the CRC.

- **Article 6 (the right to life)** – the Complainants claim that the Respondent States' acts and omissions in perpetuating climate change have exposed them throughout their childhoods to the foreseeable, life-threatening risks of anthropogenic climate change in the form of heat, floods, storms, droughts, disease, and polluted air, and that the life-threatening risks will increase throughout their lives as global temperatures rise to 1.5 degrees Celsius and beyond.²¹⁵
- **Article 24 (right to health)** – the Complainants claim that the Respondent States' acts and omissions in perpetuating climate change have caused injuries to their physical health, including asthma and emotional trauma, with such alleged violations to their right to health under Article 24 of the CRC only set to worsen as global warming continues.²¹⁶
- **Article 30 (rights of indigenous children)** – among the Complainants are children from indigenous communities in Alaska, the Marshall Islands and Sapmi in Scandinavia. These children also claim that the Respondent States' contributions to climate change have threatened traditional subsistence practices, which concern not only the security of their livelihoods but also directly relate to specific ways of being, seeing and acting in the world that are essential to their cultural identity.²¹⁷

The remedy sought by the Complainants was a declaration by the Committee that:

- (a) climate change is a children’s rights crisis;
- (b) each Respondent State, along with other States, has caused and is perpetuating the climate crisis by knowingly acting in disregard of available scientific evidence regarding the measures needed to prevent and mitigate climate change; and
- (c) by perpetuating life-threatening climate change, each Respondent State is violating the Complainants’ rights to life, health and the prioritisation of the child’s best interests, as well as the cultural rights of Complainants from indigenous communities.²¹⁸

The Complainants further requested that the Committee recommend that:

- (a) each Respondent State review, and where necessary, amend its laws and policies to ensure that mitigation and adaptation efforts are being accelerated to the maximum extent of available resources and on the basis of the best available scientific evidence to:
 - (i) protect the Complainants’ rights; and
 - (ii) make the best interest of the child a primary consideration, particularly in allocating the costs and burdens of climate change mitigation and adaptation;
- (b) each Respondent State initiate cooperative international action – and increase its efforts with respect to existing cooperative initiatives – to establish binding and enforceable measures to mitigate the climate crisis, prevent further harm to the Complainants and other children, and secure their inalienable rights; and
- (c) pursuant to Article 12 of the CRC, each Respondent State shall ensure children’s right to be heard and to express their views freely, in all international, national, and subnational efforts to mitigate or adapt to the climate crisis and in all efforts taken in response to the communication to the Committee.²¹⁹

1.3 How did the children stakeholders become aware of the environmental issue to which this case study relates?

The Complainants’ submissions to the Committee outlined how climate change had personally impacted the rights to life, health and culture of each Complainant and instigated their consciousness of the impacts of climate change. For example:

- Complainants from Nigeria and the Marshall Islands pointed to how they contracted new infectious diseases such as dengue fever, and how existing chronic health conditions like asthma had been exacerbated by hotter temperatures and worsened air quality, due to climate change;
- Complainants from Tunisia and the USA pointed to their experiences of destructive wildfires, which are increasingly prevalent due to the effects of climate change;
- Complainants from South Africa and France pointed to their experiences of heatwaves, while Marshallese, Argentinian, Brazilian and German Complainants referenced their experiences of destructive storms, which are increasing in intensity due to climate change;
- Complainants from the Marshall Islands, Palau and India pointed to their experiences of rising sea levels and flooding caused by climate change; and
- Complainants from indigenous communities in Sweden and Alaska noted their experiences of threats to traditional subsistence practices as the food sources of reindeer in northern Scandinavia and the populations of salmon in Alaska are adversely affected by climate change.²²⁰

Among the Complainants are prominent young people climate change activists who, prior to their involvement in the complaint to the Committee, had already gained a public profile domestically and internationally. For example, Greta Thunberg pioneered the School Strike for Climate / Fridays for Future movement and has been recognised as one of the world's leading young climate activists. Likewise, Alexandria Villasenor has become renowned for founding the youth-led Earth Uprising movement and for her persistent Friday morning protests outside the United Nations in New York.

1.4 Why did they choose to pursue this strategy?

The Respondent States are all State parties to both the CRC as well as the Optional Protocol, which empowers the Committee on the Rights of the Child to hear complaints against these States parties in accordance with the procedures set out in the Optional Protocol. The Committee is comprised of 18 independent child rights experts and oversees States parties' compliance with their obligations under the CRC. As the body with oversight functions for compliance with the CRC, the Committee has been targeted by the Complainants as a key forum for holding the Respondent States and similar major emitters accountable for the effects of climate change and to encourage further action to limit global temperature rises to no more than 1.5 degrees Celsius compared to pre-industrial levels.

The Complainants strategically targeted the Respondent States as they are not only parties to both the CRC and the Optional Protocol, but also because they are all G20 members and therefore constitute some of the world's leading economies and major historical emitters. The Complainants contend that as a member of the G20, each Respondent State must set a precedent for other countries, by reducing emissions at the greatest possible rate and consistent with a scale and is scientifically established to protect life.²²¹ As the G20 also includes major emitters such as the United States,

China and the European Union, the complaint was also intended to compel the Respondent States to use all available legal, diplomatic, and economic tools to exert pressure on other major emitters to also decarbonise at a scale and rate necessary to achieve collective goals of emission reduction.²²²

1.5 Who or what was the main access point for the children stakeholders in this case study to advocate for their rights and seek redress?

The Complainants were represented by and received legal assistance from Hausfeld LLP and Hausfeld UK (**Hausfeld**) and Earthjustice, which each acted as co-counsel. Hausfeld is a global corporate law firm based in the United States, with offices in the United Kingdom and continental Europe, and which has an established environmental law practice.

Earthjustice is a non-profit public interest environmental law organisation based in the United States that has a long history of engaging in strategic environmental and climate change litigation.²²³

Through the case, Hausfeld and Earthjustice also worked with leading climate scientists and commissioned expert reports for each Respondent State to document their emissions and policies and practices that continue to promote global warming. They also partnered with local legal experts in each of the five Respondent States to help prepare legal arguments specific to each Respondent State and in support of the proposition that the Committee on the Rights of the Child is the only body that can address the global nature of the case.²²⁴

The Complainants' case was also supported by an amicus curiae brief filed by a former and the current UN Special Rapporteur on Human Rights and the Environment, Dr. David Boyd and John Knox.²²⁵

1.6 What were the outcomes of pursuing this strategy?

While Article 5 of the Optional Protocol provides that complaints (or 'communications') may be submitted by or on behalf of an individual or group "within the jurisdiction of a State party" and where that individual or group of complainants claim to be "victims of a violation by that State party,"²²⁶ the petitioners represented a transnational coalition of young people, some of whom are not citizens of any of the Respondent States. The Committee therefore had to consider the novel question of whether its jurisdiction extended to alleged rights violations arising from transboundary harm.

The Committee clarified that under the CRC, State parties can owe extra-territorial obligations to the children of other States in the context of climate change. Consistent with principles of law concerning State responsibility for transboundary harm developed by the Council and regional human rights courts and tribunals, the Committee held that the relevant test in such cases is that:

*"when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated for the purposes of article 5 (1) of the Optional Protocol if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question."*²²⁷

Accordingly, the Committee determined that each of the Respondent States had effective control over the sources of emissions that contribute to the cause of reasonably foreseeable harm to children outside its territory, and that there was a sufficient causal link between the harm alleged by the children petitioners and the actions or omissions of the States parties for the purposes of establishing jurisdiction for complaints under the Optional Protocol.²²⁸ As a result, the Committee found that it had jurisdiction over the complaint under Article 5(1) of the Optional Protocol.



Ultimately, however, the Committee was unable to rule on whether these States had violated their respective obligations under the CRC. The complaints procedure under the Optional Protocol only permits petitions where all available domestic legal remedies have already been exhausted (unless domestic remedies are unreasonably prolonged or unlikely to provide effective relief).²²⁹ The Committee found that the young petitioners had not exhausted domestic legal remedies and therefore declined to adjudicate further.²³⁰

While the Complainants were not able to achieve the remedies that they sought in the complaint, the decision of the Committee still represents a significant development from a jurisdictional perspective and is one which is likely to have persuasive precedential value for future international and domestic actions for advancing climate and environmental justice. Moreover, in reasoning that the Complainants had not exhausted domestic remedies prior to bringing the complaint and considering arguments from each of the Respondent States that domestic remedies were potentially available to the Complainants and were not unlikely to bring effective relief, the Committee's decision arguably sets out a roadmap for access to justice under each Respondent State's domestic legal system. While this may not be a satisfying result for the Complainants, who are seeking urgent action to limit the impact of climate change, the decision can still inform future climate and environmental justice strategies.

1.7 Did the child stakeholders face any challenges or obstacles in pursuing this strategy?

As discussed above, the major obstacle for the Complainants concerns the admissibility of their claim. While the Committee explained that the requirement for exhaustion of domestic remedies need not apply if there is objectively no prospect of success – for example, in cases where the claim would inevitably be dismissed under applicable domestic law or where established precedent of the highest domestic court or tribunal would preclude a positive result – it ultimately concluded that *“mere doubts or assumptions about the success or effectiveness of remedies do not absolve the [Complainants] from exhausting them.”*²³¹ This creates a major legal hurdle for the Complainants and similar groups seeking redress through the Committee on the Rights of the Child: that is, to meet a standard of inevitable futility if they were to seek redress through domestic judicial mechanisms.

Moreover, while the admissibility provisions of the Optional Protocol caveat that the requirement that all domestic remedies need to be exhausted where the *“application of the remedies is unreasonably prolonged or unlikely to bring effective relief,”*²³² this standard still requires complainants seeking to rely on the Optional Protocol to first engage in resource- and time-intensive domestic court and other formal judicial processes before they are able to establish an admissible complaint for consideration by the Committee. Given the urgency of climate action, this requirement is particularly challenging for young activists seeking immediate and substantive action by States to address climate change. Where children already face access to justice challenges in domestic legal systems, the admissibility requirements under the Optional Protocol therefore arguably create compounding barriers to children accessing time-sensitive remedies in relation to climate and environmental justice claims related to alleged violations of their rights under the CRC.

1.8 Have the children stakeholders experienced any backlash for pursuing this strategy?

From our review, we are not aware of the Complainants having experienced any backlash or reprisals for pursuing this strategy.

1.9 What are the implications of this strategy for the legal empowerment of children and young people in the Region?

This case study offers some important lessons for developing a legal empowerment strategy for advancing climate and environmental justice for children and young people in the Region:

- (a) The decision of the Committee represents an important development in climate justice for children from low-carbon emitting States such as Palau and the Marshall Islands, who are particularly susceptible to the adverse effects of worsening climate change, as they may seek redress through the Committee on the Rights of the Child against high carbon-emitting States such as France and Germany.
- (b) Lawyers (both from corporate law firms as well as environmental law NGOs), legal academics, and other individuals with legal training can play an important role as an access point for children to seek climate and environmental justice not just in domestic forums, but also in international forums like the Committee on the Rights of the Child.
- (c) In climate and environmental justice cases with an international or transnational dimension, local legal experts can work with international lawyers to contribute their jurisdiction-specific expertise to the development of global claims and causes of actions

for children to advance legal strategies for climate and environmental justice.

- (d) Climate change scientists and other non-legal experts can also play a role in international and domestic judicial and quasi-judicial proceedings by acting as *amicus curiae* ('friends of the court') and providing expert opinions to assist judicial and quasi-judicial decisionmakers.
- (e) By building a transnational coalition with other young people involved in climate and environmental activism, young people can gain international public attention and build a case that their grievances are global issues that only an international institution like the Committee on the Rights of the Child is able to address.
- (f) Complaints to intergovernmental organisations offer high profile and highly public forums for advancing novel climate and environmental justice claims framed in terms of the rights of children, which may not otherwise be available under domestic legal systems. However, seeking redress through such mechanisms may present unique legal hurdles which must be overcome, particularly in relation to admissibility of claims and jurisdiction.
- (g) There is growing recognition in international courts, tribunals and quasi-judicial bodies, that States may be held responsible for their contributions to anthropogenic climate change due to greenhouse gas emissions, and that on the basis of principles of transboundary harm, claims may be made against States by children and young people who are not citizens of the respondent States.
- (h) While the complaint to the Committee on the Rights of the Child is a prominent recent case study with positive precedential value for similar future actions by other groups of children, the resources, legal support and public platform made available to the Complainants is not a universal guarantee for other groups of children. Among the Complainants are some of the world's most prominent climate activists, including Greta Thunberg and Alexandra Villasenor, who each already have a significant international public profile. For other children who lack the same public profile and privileges of the Complainants, bringing a complaint to the Committee may not be a feasible or realistic option for accessing justice in relation to climate change or environmental issues affecting them.



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2 Australia – Sharma v Minister for the Environment



2.1 Overview

Name of case study	<i>Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment</i> ²³³
Type of strategy adopted	Litigation (planning and development proposal challenge)
Forum	Federal Court of Australia
Litigious or non-litigious	Litigious
Year commenced	2020
Current status	Ongoing (subject to appeal)
Jurisdiction	Australia
Target entities	Commonwealth Government of Australia, through the Minister for the Environment
Key child / youth stakeholders	<ol style="list-style-type: none"> (1) Anjali Sharma; (2) Isolde Raj-Seppings; (3) Ambrose Malachy Hayes; (4) Tomas Webster Arbizu; (5) Bella Paige Burgemeister; (6) Laura Fleck Kirwan; (7) Ava Princi; (8) Luca Gwyther Saunders; and (9) Veronica Hester (the Applicants).
Number of people involved	10 (the 9 Applicants and their legal representative, Sister Marie Brigid Arthur)
Environmental issue	Climate change, with a focus on the contributions of coal mining in Australia on global greenhouse gas emissions

2.2 What was the case about?

The Applicants commenced the proceedings in the Federal Court of Australia against the Commonwealth Minister for the Environment, Sussan Ley (the **Minister**), and mining company Vickery Coal Pty Ltd (**Vickery Coal**). Vickery Coal is a wholly-owned subsidiary of Whitehaven Coal Pty Ltd, which holds development consent for a coal mine in northern New South Wales, known as the Vickery Coal Project (the **Project**). The Applicants' case relates to an application by Whitehaven to the Minister to expand and extend the Project (**Expansion Project**), which if approved would increase total coal extraction from the mine site from 135 million tonnes to 168 million tonnes.²³⁴ The Court noted that if combusted, this additional coal would produce around 100 million tonnes of carbon dioxide.

The case concerns claims by the Applicants that the Minister owes them and other Australian children a duty of care in relation to considering whether to approve the Expansion Project when exercising her powers under Australian planning and development legislation (the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**)).

The Applicants brought the application on their own behalf (acting through a litigation representative, Sister Marie Brigid Arthur of the Roman Catholic Brigidine Order of Victoria), as well as by way of a representative proceeding on behalf of all children ordinarily residing in Australia.²³⁵ The application alleges a wide range of harms will result from the approval of the Expansion Project once the coal is combusted resulting in greenhouse gases amounting to roughly 100 Mt CO₂-e.²³⁶ The alleged harms included personal injury, property damage and pure economic loss.²³⁷

2.3 How did the children stakeholders become aware of the environmental issue to which this case study relates?

According to media interviews, the main applicant in the proceedings, Anjali Sharma (17 years old), became conscious of climate change issues when she travelled to India in 2017 to visit family and witnessed their experience with severe flooding. This led her to start conducting her own research into climate change issues. She recounts that: *"It really made me angry that Australia, as a country, was not doing the things it should be doing to mitigate the harmful effects of climate change."*²³⁸

Motivated to take action about climate change, Anjali Sharma started an Instagram account, where she posted about climate change issues. The account gained over 12,000 followers in a year and evolved into in-person campaigning. Sharma joined the Australian chapter of School Strike 4 Climate and became part of an organising group with around 500 other students who organised a series of climate action marches attended by hundreds of thousands of school students across Australia.²³⁹

The other Applicants are all young organisers and activists who, for example, have been involved in local and international climate justice initiatives such as School Strike for Climate (as participants and local chapter organisers), as well as sustainability initiatives.²⁴⁰ Many have pointed to their or their families' personal experiences of the effects of climate change as the main inspiration for their involvement in the case and climate activism more generally.

2.4 Why did they choose to pursue this strategy?

The Applicants are passionate about climate justice and are all involved in organising School Strike 4 Climate activities in Australia.

They have been frustrated by the perceived inaction of policymakers in Australia to take more ambitious action to address climate change and have sought recourse through climate litigation.²⁴¹ The case represents a novel climate litigation strategy in Australia framed in terms of intergenerational equity, the law of negligence, and where the applicants in the proceedings are parties who will be directly impacted by the intergenerational injustices caused by climate change.

2.5 Who or what was the main access point for the children stakeholders in this case study to advocate for their rights and seek redress?

The Applicants were represented by Equity Generation Lawyers (**EGL**) in the proceedings. EGL is an Australian law firm that specialises in climate change law and climate risk litigation. Besides the *Sharma v Minister for the Environment* case, EGL is also engaged in case brought by university student Kathleen O'Donnell against the Commonwealth Government for an alleged failure to disclose climate change risks to sovereign bond investors.²⁴² It was through the Applicants' organising for the School Strike 4 Climate movement that they were able to connect with solicitors from EGL in Melbourne.²⁴³

Sister Marie Brigid Arthur is an 86-year old nun from the Roman Catholic Brigidine Order who acted as litigation guardian for the Applicants. Sister Arthur has been actively involved in organisations that assist asylum seekers and refugees in Victoria and has worked to advance justice for young

people throughout her career in various capacities, including as a litigation guardian for marginalised and underprivileged young people. She is a former schoolteacher and has previously acted as a litigation guardian for children in immigration detention and children incarcerated in adult prisons in Australia.²⁴⁴

2.6 What were the outcomes of pursuing this strategy?

The first instance decision of the Federal Court was delivered on 27 May 2021. In that decision, Justice Bromberg ruled that the Minister has a duty to protect Australian children when deciding whether to approve the Expansion Project. However, the Court refused to grant an injunction restraining the Minister from exercising that power,²⁴⁵ but indicated that it would hear further submissions as to whether the novel duty of care extends beyond the specific project,²⁴⁶ and the terms of a declaration concerning the duty.²⁴⁷ This was a landmark decision for Australian climate litigation and a novel development of a statutory duty of care in Australia.

In an important jurisprudential development, the Court readily accepted the scientific evidence for climate change and recognised the intergenerational injustice that climate change represents for the Applicants and other children in Australia. Unchallenged²⁴⁸ expert evidence was submitted by the Applicants in the case to show the severe direct and indirect impacts flowing from increased greenhouse gas concentrations in a range of scenarios, emphasising the "exponentially increasing risk" of runaway global warming as global temperatures rise more than two degrees Celsius above pre-industrial levels.²⁴⁹ The Court also opined that:

*"It is difficult to characterise in a single phrase the devastation that the plausible evidence presented in this proceeding forecasts for the Children... It will largely be inflicted by the inaction of this generation of adults, in what might fairly be described as the greatest inter-generational injustice ever inflicted by one generation of humans upon the next."*²⁵⁰

While the Minister disputed that the Expansion Project would materially increase the risk of harm to the Applicants from global warming, this contention was rejected by the Court, which accepted evidence that “90% of Australia’s existing coal reserves cannot be burnt to meet a 2°C target; and as a result “it seems unlikely that a capacity for new reserves to be included exists.”²⁵¹ More importantly, the Court held that runaway global warming might plausibly be “triggered even by a fractional increase in temperature.”²⁵²

While the Court found that the Minister owed a duty of care to the Applicants in relation to the decision to approve the Expansion Project, it declined to grant the injunctive relief sought by the Applicants for two key reasons. First, the Applicants did not establish that the duty would in fact be breached. Second, the form of injunction sought (being a *quia timet* injunction to prevent an apprehended breach of the duty of care) was found to be inappropriate, as it would create incoherence by preventing the Minister from responding in a reasonable manner to the duty of care and would exceed any impairment on Ministerial discretion justified by the imposition of liability in negligence.²⁵³

While the Applicants were not successful in achieving the relief sought, the decision at first instance left open the possibility that the Applicants could seek an injunction at a later date.²⁵⁴

On 16 July 2021, the Minister appealed

Justice Bromberg’s judgment and on 15 March 2022, the Full Court of the Federal Court of Australia delivered its judgment on that appeal in *Minister for the Environment v Sharma* [2022] FCAFC 35 (**Appellate Judgment**).

In the Appellate Judgment, the Court overturned the decision of Justice Bromberg, with all judges deciding that no duty of care should be imposed on the Minister. While the decision no doubt dealt a blow to the Applicants, it notably did not dispute the science on climate change. Chief Justice Allsopp noted that: “the nature of the risk and dangers from global warming including the possible catastrophe that might engulf the world and humanity was not in dispute.”²⁵⁵

Further, while all judges agreed that the duty of care did not exist, they disagreed on whether imposing such a duty of care was a matter purely of policy for the executive and legislative branches of government, or a matter to be decided through future jurisprudence of the judiciary. As Chief Justice Allsopp reasoned: “To the extent that the evidence and the uncontested risks of climate catastrophe call forth a duty of the Minister or the Executive of the Commonwealth, it is a political duty: to the people of Australia.”²⁵⁶ On the other hand, Justice Beach disagreed, holding that “policy is no answer to denying the duty,”²⁵⁷ and deferring to the High Court of Australia (the highest court in Australia’s judicial system) to “engineer new seed varieties for sustainable duties of care.”²⁵⁸



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2.7 Did the children stakeholders face any challenges or obstacles in pursuing this strategy?

Because the Applicants were all under the age of 18 at the time they commenced proceedings against the Minister, they were required to find and appoint a litigation representative and could not bring the action in their own capacity.

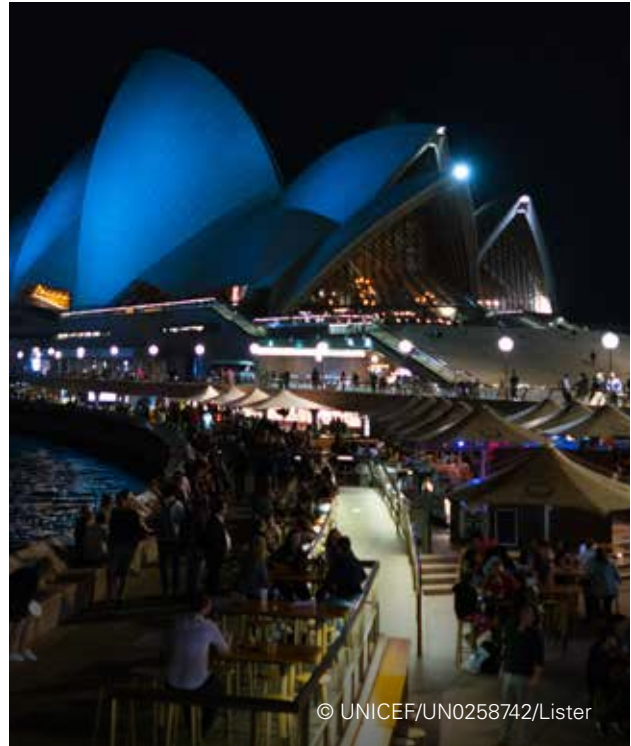
Moreover, being all under the age of 18 and at school age, the Applicants faced personal challenges of balancing their involvement in the case with completing their studies.

2.8 Have the children stakeholders experienced any backlash for pursuing this strategy?

Some of the Applicants have reported facing potential legal consequences in relation to their involvement in climate activism. For example, Izzy Raj-Seppings, then 13 years old, participated in a climate change protest in December 2019 at Kirribilli House, the residence of the Australian Prime Minister in Sydney, where she was reportedly threatened with arrest after police issued a move-on order.²⁵⁹

2.9 What are the implications of this strategy for the legal empowerment of children and young people in the Region?

This case study offers some important lessons for developing a legal empowerment strategy for advancing climate and environmental justice for children and young people in the Region:



- (1) Involvement in climate and environmental activism and campaigns can be the platform for access to justice and legal empowerment by spawning climate litigation and other strategies in pursuit of climate and environmental justice. It can also provide opportunities for children to connect with lawyers and lead to strategic litigation for advancing climate and environmental justice.
- (2) Adults do not need legal qualifications to be able to empower young people and facilitate their access to justice. By acting as litigation guardians or legal representatives, adults over the age of 18 can create a bridge between children, who would ordinarily lack standing in their own right, and access to formal justice processes.
- (3) Even in common law legal systems where jurisprudence tends to develop incrementally and quite conservatively, there is scope for advancing novel legal claims regarding human rights and environmental and climate justice.

3 Philippines – The Minors Oposa v Secretary of the Department of Environmental and Natural Resources



3.1 Overview

Name of case study	<i>The Minors Oposa v Secretary of the Department of Environmental and Natural Resources</i> ²⁶⁰
Type of strategy adopted	Litigation
Forum	Supreme Court of the Philippines
Litigious or non-litigious	Litigious
Year commenced	1990
Current status	Final judgment delivered on 30 July 1993
Jurisdiction	The Philippines
Target entities	The Philippines Government, specifically The Hon. Fulgencio S Factoran, Jr., in his capacity as Secretary of the Department of Environmental and Natural Resources (the Secretary)
Key child / youth stakeholders	(1) 42 child petitioners (represented by their respective parents); and (2) the Philippine Ecological Network, Inc. (the Plaintiffs)
Number of people involved	80 (being the 42 children petitioners and their respective parents as their legal representatives) and the Philippine Ecological Network, Inc.
Environmental issue	Environmental harm caused by deforestation of virgin rain forests in the Philippines through logging and forestry activities

3.2 What was the case about?

The Plaintiffs commenced the action against the Secretary to prevent the destruction of rainforests in the Philippines and based their claims on the 1987 Constitution of the Philippines. The Constitution recognises in Section II Article 16 the right to a *“balanced and healthful ecology in accord with the rhythm and harmony of nature.”*²⁶¹ In submissions before the Court, the Plaintiffs also raised arguments concerning the concept of intergenerational equity, including that the Plaintiffs represent their generation as well as generations yet unborn.

The case considered four key questions:

- (a) whether the class action brought by the Plaintiffs was valid;
- (b) whether the circumstances gave rise to a cause of action;
- (c) whether judicial review could be invoked; and
- (d) whether a revocation of timber licences (as sought by the Plaintiffs) would result in a breach of the Philippines Constitution by way of impairment of contracts.

The relief sought by the Plaintiffs was for the cancellation of all existing timber licence agreements in the Philippines and for the Secretary to cease and desist from receiving, accepting, processing, renewing or approving new timber licence agreements.²⁶²

In its final judgment, the Supreme Court ruled in favour of the Plaintiffs and provided unprecedented jurisprudence, which included establishing that:

- (a) there is no question that the right to a balanced and healthful ecology is fundamental;
- (b) the child Plaintiffs had capacity to file a class suit on behalf of themselves, for others of their generation, as well as for succeeding generations;

- (c) the Plaintiff’s personality to sue on behalf of future generations is based on the concept of intergenerational responsibility regarding the right to a balanced and healthful ecology;
- (d) every generation has a responsibility to the next and future generations to preserve the rhythm and harmony of nature for the full enjoyment of a balanced and healthful ecology; and
- (e) the Constitution of the Philippines requires the Philippines Government to protect and promote the health of the people and instil health consciousness among them.

In making the above findings, Court also made an important pronouncement that, *“[t]he right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment,”*²⁶⁴ and that, *“[t]he said right implies, among many other things, the judicious management and conservation of the country’s forests.”*²⁶⁵

3.3 How did the children stakeholders become aware of the environmental issue to which this case study relates?

The Plaintiffs included the children of a prominent Philippine environmental lawyer and activist, Antonio Oposa.²⁶⁶



3.4 Why did they choose to pursue this strategy?

The Philippines was the first country in the world to explicitly recognise in its Constitution a right to a healthy environment, in 1987. Following the passage of the 1987 Constitution, the *Minors Oposa v Factoran* case was an important test case for determining the nature and scope of this right, especially in terms of questions of intergenerational equity. Antonio Oposa, the father of some of the Plaintiffs and legal representatives for all of the Plaintiffs in the proceedings, brought the case to protect threatened virgin forests in the Philippines that were threatened by logging concessions granted by the Philippines government, on behalf of Philippine children and generations yet unborn.²⁶⁷

3.5 Who or what was the main access point for the children stakeholders in this case study to advocate for their rights and seek redress?

The child Plaintiffs were represented by their parents in the proceeding due to concerns that they would lack legal capacity to have standing in the proceedings. Notably, the Plaintiffs included the children of a renowned environmental activist and lawyer, Antonio Oposa, who also acted as a legal representative acting on behalf of his own children and other child Plaintiffs. Mr Oposa also appeared before the Supreme Court on behalf of the Plaintiffs as their legal counsel

They also received the support of a prominent non-governmental organisation, the Philippine Ecological Network, Inc., which acted as a co-plaintiff.

3.6 What were the outcomes of pursuing this strategy?

The decision of the Supreme Court was the first in the world to explicitly recognise the right of children to a healthy environment. It also pioneered the principle of intergenerational equity, which has since come to be known as the 'Oposa doctrine'. The decision is significant as it comes from the highest Court in the Philippines legal system and concerns constitutional rights enshrined in the Philippines 1987 Constitution and therefore has significant precedential value within the Philippines' domestic legal system.

Practically speaking, as a result of the decision, the Philippines Government conducted an inventory of all remnant old growth forests in the Philippines and restricted logging activities in those areas.²⁶⁸

Importantly, from a legal perspective, the decision liberalised the legal standing requirements for representative actions with respect to the constitutional right to a balanced and healthy ecology. The Court recognised intergenerational responsibility in relation to protecting that right, affirming that the underaged petitioners were allowed to represent themselves as well as "generations yet unborn" in the proceedings.

Since the case was decided in 1993, a body of case law has developed in the Philippines over the past 25 years that considers the impact of environmental degradation on children and future generations, and which reaffirms the principles set out in the Supreme Court's landmark *Minors Oposa v Factoran* decision. Those cases have considered, for example:

- the preservation of marine environments;²⁶⁹
- waste management;²⁷⁰ and
- the remediation of environmental pollution from mining and exploration activities.²⁷¹

Related to and building upon the landmark decision in the *Minors Oposa v Factoran* decision, Philippine Courts have also more recently developed unique procedural rules that are designed to enhance and enforce the constitutional rights of Philippine citizens to a balanced and healthful ecology. On 29 April 2010, the Rules of Procedure for Environmental Cases (A.M. 09-6-8-SC) (2010) (**SC Rules**) developed by the Philippines Supreme Court came into effect.²⁷² The SC Rules provide specific procedural rules for civil, criminal and special civil actions in the primary and secondary level trial courts (that is, Regional Trial Courts, Metropolitan Trial Courts and Municipal Trial Courts) as well as higher level courts (the Supreme Court and Court of Appeals, in respect of specific procedural mechanisms) involving enforcement or violations of environmental and other related laws, rules and regulations. The express purpose of the SC Rules includes to protect and advance the “constitutional right of the people to a balanced and healthful ecology” and to promote access to justice in environmental litigation by providing a “simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognised under the Constitution, existing laws, rules and regulations, and international agreements.”²⁷³

In particular, the notable procedural innovations contained in the SC Rules include:

- Citizen Suits** – Rule 2 section 5 provides that “[a]ny Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws” and sets out the specific requirements for pleadings for these actions. Remedies available for the court to grant the successful applicants in a citizen suit include “the protection, preservation or rehabilitation of the environment” and requiring the violator to submit a “program of rehabilitation or restoration of the environment” or to contribute to a special trust fund for that purpose subject to the control of the court.
- Temporary Environmental Protection Order (TEPO)** – the TEPO is a specific form of urgent interlocutory injunction focused on environmental protection and may be sought by an applicant who is at risk of “grave injustice and irreparable injury.”²⁷⁵ A TEPO may also be converted into a permanent environmental protection order or a writ of continuing mandamus to direct the performance of acts which shall be effective until the judgment is fully satisfied.²⁷⁶
- Protection against harassing countersuits, or ‘Strategic Lawsuits Against Public Participation’ (SLAPP)** – the SC Rules also address legal actions filed to “harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.”²⁷⁷ If a party seeking to enforce environmental laws or protect the environment is subject to such harassing or vexatious litigation, they may make a claim that such litigation constituted a SLAPP and put the plaintiff bringing the purported SLAPP to proof by “preponderance of evidence” that their action does not constitute a SLAPP, while the party seeking enforcement of environmental law must prove “by substantial evidence” that their enforcement action is a “legitimate action for the protection, preservation and rehabilitation of the environment.”²⁷⁸ That is, the standard of proof for the SLAPP plaintiff for disproving their litigation constitutes a SLAPP is higher than the standard that the plaintiff in environmental law enforcement action needs to discharge to show that their action is legitimate.
- Writ of Kalikasan** – the SC Rules introduce a unique writ of *kalikasan* (or ‘writ of nature’) procedure, which is available when the alleged violation of the constitutional right to a balanced and healthful ecology by a public official or private individual or entity is of “such magnitude as to prejudice the life, health or property or inhabitants in two or more cities or provinces.”²⁷⁹ The

writ is issued either by the Supreme Court or the Court of Appeals of the Philippines within 3 days of filing and set for hearing within 60 days of filing.²⁸⁰ An application may be brought by any “*natural or juridical person, entity authorised by law, people’s organisation, non-governmental organisation, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation.*”²⁸¹ The benefit of the writ of *kalikasan* is that a petitioner can immediately and directly take recourse to the higher courts of the Philippines. Judgment must also occur on an expedited timeline of within 60 days of submission of petition.²⁸² The form of relief available to the court is wide-ranging and includes: (i) directing a respondent to permanently cease and desist any act or omission in violation of environmental laws that results in environmental destruction or damage; (ii) directing the respondent to protect, preserve, rehabilitate or restore the environment; (iii) directing the respondent to make periodic reports on compliance with the final judgment; and (iv) any other form of relief relating to the constitutional rights to a balanced and healthful ecology or to protection, preservation, rehabilitation or restoration of the environment.²⁸³ However, relief expressly excludes the awarding of damages to a petitioner.²⁸⁴

3.7 Did the children stakeholders face any challenges or obstacles in pursuing this strategy?

The decision in *Minors Oposa v Factoran* was made by the judges of the Philippines Supreme Court on appeal from the Regional Trial Court of Makati (**Makati Court**). The Plaintiffs were originally unsuccessful in their claim at first instance before the Makati Court, which found that granting the relief sought by the Plaintiffs would impair logging contracts,

which would be contrary to Section 10, Article III of the Philippines Constitution.

3.8 Have the children stakeholders experienced any backlash for pursuing this strategy?

From our review, we are not aware of the Plaintiffs or their representatives having experienced any backlash or reprisals for pursuing this strategy.

3.9 What are the implications of this strategy for the legal empowerment of children and young people in the Region?

This case study offers some important lessons for developing a legal empowerment strategy for advancing climate and environmental justice for children and young people in the Region:

- (a) Parents and legal guardians can play an important role as key access points for children to seek remedies for environmental and climate change issues in national courts and tribunals, whether by acting as legal representatives and providing standing for children, or even as legal counsel for children themselves (in cases where parents and guardians are legally qualified).
- (b) In legal systems where the decisions of courts and tribunals have precedential value and are important sources of law, positive jurisprudence in support of the environmental and climate justice claims of children can act as a catalyst for systemic changes to procedural rules, including the creation of new forms of legal remedies specific to environmental cases, and protections for environmental activists and litigants against strategic litigation aimed at impeding their public participation (that is, SLAPPs).

4 Thailand – Klity Creek litigation



4.1 Overview

Name of case study	<i>Yasae Nasuansuwan et. al. v Lead Concentrates (Thailand) Co., Ltd. et. al.</i>
Type of strategy adopted	Litigation and environmental activism
Forum	<ol style="list-style-type: none"> (1) Kanchanaburi Provincial Court, Thailand (2) Court of Appeal, Region 7, Thailand (3) Supreme Administrative Court of Thailand (4) Supreme Court of Thailand
Litigious or non-litigious	Litigious
Year commenced	2003 ²⁸⁵
Current status	Clean-up efforts are ongoing
Jurisdiction	Thailand
Target entities	<ol style="list-style-type: none"> (1) Department of Pollution Control (2) Lead Concentrates (Thailand) Co., Ltd.
Key child / youth stakeholders	Thai-Karen villagers of 'Lower Klity Village' in Kanchanaburi's Thong Pha Phum district (Plaintiffs)
Number of people involved	151
Environmental issue	Lead pollution into Klity Creek waterway

4.2 What was the case about?

The Plaintiffs are Thai villagers belonging to the Karen minority ethnic group who reside in 'Lower Klity Village' in Thong Pha Phum district in Kanchanaburi, which is located approximately 160 kilometres west of Bangkok, near Thailand's border with Myanmar. The villagers' livelihoods are primarily based on subsistence farming. They rely on access to the local waterway, Klity Creek, to support their livelihoods and daily water and sanitation needs.

In 1998, it emerged that Klity Creek had been contaminated by wastewater illegally discharged into the creek from a nearby lead factory owned by Lead Concentrates (Thailand) Co., Ltd. (**Lead Concentrates**).²⁸⁶ The Plaintiffs consumed contaminated water from the creek and suffered health damage and lost their ability to work as a result.²⁸⁷ Children are particularly vulnerable to the effects of lead poisoning.²⁸⁸ As a result of the contamination of the creek, some children in the community have experienced severe intellectual and developmental disabilities. The pollution of Klity Creek and subsequent impacts on the health and environment of the community led to the villagers to commence three lawsuits before Thai courts to remedy the pollution of the creek.

In the first case decided by the Supreme Administrative Court of Thailand in 2012,²⁸⁹ 22 households of the village commenced proceedings against the Department of Pollution Control (**Department**) in relation to the contamination of Klity Creek (**2012 Case**). The Court held that the Department had failed to perform its legal duties to restore the creek and extinguish the lead contamination, which directly resulted in the Plaintiffs' inability to use and benefit from the creek. The remedy ordered by the Court was for the Department to undertake remedial actions to restore the water quality and environment of the creek until lead contamination fell within prescribed water quality standards. It further ordered that the Department pay damages to the Plaintiffs.

In the second case decided by the Environmental Division of the Supreme Court of Thailand in 2015, the Plaintiffs commenced action against Lead Concentrates (**2015 Case**).²⁹⁰ The Court ordered that the company pay compensation to each Plaintiff for approximately 2,000,000 to 3,000,000 Thai Baht each, and for the company to undertake restoration of the creek. Because the Plaintiffs are members of the Karen ethnic minority, the Court also found that the Plaintiffs had a right under the Constitution of Thailand to utilise, manage and conserve the environment, and therefore demand rehabilitation of the creek.

The judgment of the Court in the 2012 Case was unprecedented in ordering a government department to perform duties of environmental remediation.²⁹¹ In response, the Department engaged a team of experts in environmental management and hazardous substances from Khon Kaen University to collect sediment and water quality sample from the creek and conduct a study to determine the guidelines for restoring the creek.²⁹² However, by 2016, the progress on the restoration of the creek had stalled and the Department had not appointed a contractor to conduct the creek restoration work.²⁹³

The third and most recent case decided by the Supreme Court of Thailand in 2017 (**2017 Case**) is an appeal of earlier judgments. In 2010 a provincial court ordered Lead Concentrates to pay 36 million Thai Baht as compensation to the villagers, which was upheld on appeal to the Court of Appeal in February 2012.²⁹⁴ The Court held that the rights of the Plaintiff to benefit from nature, as well as their rights to normal and continuous living in a healthy environment, had been violated. The defendants (being Lead Concentrates and affiliated companies and individuals) were found to owe the Plaintiffs a duty to rehabilitate Klity Creek at their own expense until the creek is returned to a condition that can be used for consumption according to government standards.²⁹⁵ The Supreme Court also held that it was a direct duty of the Department and other relevant government agencies to maintain and correct natural resources and the environment.²⁹⁶

In response to the 2017 Case, the Department commenced a project to dredge lead sludge from Klity Creek and to dispose this lead waste into landfill (**Dredging Project**). The Dredging Project is being conducted by a third-party contractor. The villagers and experts assisting them have continued to monitor sediment and water quality samples of the creek due to their concerns that there may be leakage from the landfill. Through this monitoring, the villagers found that there was a diffusion of lead sediment from the landfill into the creek, which caused water turbidity to increase by more than 10-times higher than natural levels in the creek.²⁹⁷ The project operating requirements for the Dredging Project require that dredging should be paused if dredging of the lead sludge causes water turbidity to exceed the natural base value by more than 10%.²⁹⁸ Local villagers have also critiqued the Dredging Project and related clean-up processes as failing to involve local people – in particular, they complain that the Tripartite Committee established between the Department, the villagers and expert advisors to monitor the progress of the creek clean-up is lopsided in that it consists of 4 villagers, 4 experts and 13 Department and local officials.²⁹⁹

In response to the leakage of lead waste from the Dredging Project into the creek, villagers filed a further petition to the Supreme Administrative Court on 14 April 2020.³⁰⁰ The petitioners have requested that the Court schedule an urgent investigation of the facts in relation to the Dredging Project and order the Department to temporarily suspend the Dredging Project until appropriate and fair measures to prevent and remedy project impacts on the villagers' health, sanitation, community and environment are found in accordance with the precautionary principle.³⁰¹

Children from the village have been involved as part of the group of Plaintiffs.³⁰² They have also engaged in advocacy activities through the Mekong Youth Assembly, which is a project supported by the German NGO Terre des Hommes. The Mekong Youth Assembly is a transnational assembly of youth groups from Cambodia,

Myanmar, Laos, Thailand and Viet Nam, which organises information events on environmental degradation and supports the lobbying of government departments and litigation to address environmental justice issues. The group also documents the consequences for health from industrial pollution of various river courses in the region and produce teaching toolkits for schools and young children.³⁰³

4.3 How did the children stakeholders become aware of the environmental issue to which this case study relates?

Klity Creek is a place where many local children learned to swim from a very young age.³⁰⁴ Children are particularly vulnerable to lead poisoning. The contamination of Klity Creek has caused several children in the village to experience developmental and intellectual disabilities. Likewise, as the village primarily relies on lead-contaminated water from the creek everyday consumption and sanitation, children have experienced health problems such as headaches, stomach pains, nausea, and loss of memory.³⁰⁵

Young people have engaged with the environmental issue by reason of necessity, as the blood levels of lead amongst children in the Klity Creek area continue to exceed medically safe thresholds. Many young people have been involved in litigation as victims. Insofar as children and young people in the Klity Creek community have sought to use the law and legal knowledge to take action regarding the environmental harms affecting their community, there are examples of young people from the village who have completed law degrees and are now building legal knowledge and strengthening other children and young people's access to justice in the community.³⁰⁶



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4.4 Why did they choose to pursue this strategy?

Since the early 2000s, a small community of social justice lawyers in Thailand formed working groups to pursue strategic social cause litigation for carefully selected cases.³⁰⁷ Led by Surachai Trongngam, an activist lawyer prominent in the constitutional reform movement in Thailand in the late 1990s, an environmental working group was created to investigate potential litigation in relation to the lead pollution of Klity Creek.³⁰⁸ Surachai Trongngam established the Environmental Law Foundation (**EnLAW**), which assisted the Plaintiffs to commence litigation to seek environmental justice in relation to the pollution of Klity Creek.

The primary motivation for commencing legal action was the lack of substantive or failed remediation efforts to improve the water quality of the creek. Efforts to dredge and remove lead-laden sediment from the creek in 1999 led to Lead Concentrates dumping much of this sediment on the creek's edge in improper landfills, creating a risk of re-contamination of the creek.³⁰⁹ Subsequent attempts to dam the creek to prevent the spread of lead sediment downstream were also found to be ineffective.³¹⁰ By 2005, the official policy position adopted for rectifying the pollution of the creek was "natural remediation."³¹¹

4.5 Who or what was the main access point for the children stakeholders in this case study to advocate for their rights and seek redress?

The villagers receive legal assistance and representation from EnLAW. EnLAW arose from collective action by a group of Thai NGOs working in the fields of environmental protection, energy, human rights and development to address an absence in Thailand of an organisation of experts in environmental law who could act to push for the correction of deficiencies in the Thai environmental law system.³¹² EnLAW was therefore established in 2001 with the mission of monitoring and supporting the enforcement of existing Thai environmental law, as well as to advocate for the improvement of Thai laws for protecting the exercise of rights of people and communities in relation to the environment. The core mission of EnLAW includes:

- (a) supporting and promoting the exercise of rights to protect the health and environment of people and communities in accordance with the Thai Constitution, other domestic laws and Thailand's international legal obligations;

- (b) supporting and promoting the principles of participation by people and communities in natural resource and environmental management (including supporting access to information and access to justice);
- (c) supporting and enhancing knowledge for lawyers and the public sector to develop a network of environmental lawyers in Thailand;
- (d) building and developing litigation networks and focusing on collaboration between victims, communities, NGOs, academics and legal experts, and lawyers;
- (e) developing a network of environmental law organisations to drive law enforcement, and to develop and improve laws; and
- (f) campaigning for the improvement and development of environmental laws.³¹³

Besides the Klity Creek litigation, EnLAW has also previously worked with lawyers from the Lawyers Council of Thailand to support environmental litigation: by victims of cobalt-60 radiation; in defence of environmental defenders who were prosecuted in connection with protests concerning planned construction of coal-fired power stations and gas pipelines; and for the conservation of ancient periwinkle forests affected by mining operations.³¹⁴

EnLAW provided free legal aid to the villagers of Klity Creek. It has also been

organising independent testing of lead levels in the creek, surrounding soil and villagers' blood to monitor lead pollution and its impacts on the local community.³¹⁵

While the older generation in the village initially engaged directly with EnLAW on litigation, children and young people had opportunities to learn about the litigation by attending court and interacting with legal experts on the matter. Now, children have become more active through advocacy and engaging in meetings with relevant stakeholders. Local young people have also developed a local map indicating lead contamination spots, which has been relied upon in litigation.

The villagers also received support from legal advocates from the Karen Studies and Development Centre, media organisations in Thailand, and civil society organisations, which have recently combined to form working groups.³¹⁶ In the Supreme Court case, the Applicants received further assistance from the Lawyers Council of Thailand.³¹⁷ The Lawyers Council is the peak body for the legal profession in Thailand and along with the Thai Bar Association, is responsible for professional regulation of lawyers in Thailand.³¹⁸

The efforts of the Plaintiffs have also been heavily featured in Thai media. Publications like the Bangkok Post have provided a consistent platform for the campaign to clean up Klity Creek. This public profile has arguably increased pressure on the Department to progress creek remediation efforts.



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4.6 What were the outcomes of pursuing this strategy?

The Supreme Court ordered that Lead Concentrates pay the Applicants 36 million Thai Baht in damages and rehabilitate and restore Klity Creek.³¹⁹ The Klity Creek cases have caused unprecedented developments in Thai environmental law, including by being one of the first cases in which a Thai government ministry has been ordered to enforce environmental law by requiring a private company to clean up pollution.³²⁰ The cases have arguably created a “polluter pays” standard in relation to the rectification of environmental damages and have implied an affirmative duty to take preventative action to remedy environmental degradation.³²¹

The Klity Creek litigation has also established a precedent for individuals and communities affected by environmental and climate change issues in Thailand to consider litigation as an established and legitimate strategy for pursuing environmental and climate justice.

4.7 Did the children stakeholders face any challenges or obstacles in pursuing this strategy?

While the Courts in the Klity Creek litigation were persuaded to provide a remedy for the costs of living of the villagers (which had been impacted by the contamination of Klity Creek), the villagers were still required to pay their own travel expenses and court fees. For a small, rural community that derives much of its income from subsistence agriculture, such expenses created a financial burden for pursuing environmental justice.³²²

Child stakeholders have also faced challenges from the government’s refusal to accept evidence and information relating to remediation activities. Villagers have criticised the Department and Lead Concentrates for neglecting the local expertise and evidence of children and



young people in relation to the remediation work and areas of contamination in Klity Creek.

Despite multiple successes in the litigation against the Department and Lead Concentrates, the remediation of the creek and efforts to improve water quality have been slow-moving. In response to the stalled progress, the villagers have engaged in (and continue to engage in) further litigation and administrative law actions to pressure the Department to continue to deliver on its obligations to address the environmental issues affecting the villagers. By pursuing a protracted litigation strategy, the villagers are required to continue expending time, funds, energy and resources, while the underlying environmental issue that has triggered the litigation continues to subsist. There are also questions as to whether the litigation can result in any tangible policy change.³²³

4.8 Have the children stakeholders experienced any backlash for pursuing this strategy?

From our review, we are not aware of the children involved in the Klity Creek litigation having experienced any backlash or reprisals for pursuing this strategy.

4.9 What are the implications of this strategy for the legal empowerment of children and young people in the Region?

This case study offers some important lessons for developing a legal empowerment strategy for advancing climate and environmental justice for children and young people in the Region:

- (a) By providing pro bono legal advice and representation, lawyers' professional bodies like law societies and bar associations can play an important role in promoting the legal empowerment of young people and disempowered communities in advancing environmental and climate justice.
- (b) Lawyers can play an important enabling role in pursuing strategic litigation not only to assist a discrete case of environmental harm, but also to build up a body of novel environmental law.
- (c) Administrative law can be an important avenue for legal empowerment through directly targeting government decision-makers and mandating remedial action be taken to address environmental harm affecting children and disempowered communities.
- (d) NGOs, lawyers, lawyers' professional associations, and other civil society actors can help empower children from indigenous communities by championing environmental justice causes to address environmental harm experienced by these communities.
- (e) Children can be empowered through what is often referred to as "citizen science" in Thailand, meaning the collection of evidence, data and factual information by local communities to support the legal case. That said, an inherent limitation to this process is judicial preference for scientific evidence presented by recognised experts.
- (f) Even when litigants experience legal gains and positive court judgments in their favour, this may not necessarily lead to tangible outcomes to remedy the environmental harm experienced unless there is institutional buy-in from key stakeholders such as government departments and oversight of third-party contractors who are engaged in remedial work to address the environmental harm experienced.
- (g) Media organisations can play a key role in maintaining pressure and providing an ongoing platform for advocacy and empowerment of communities affected by environmental harm and climate change (even in the context of protracted court proceedings).
- (h) Coalitions of environmental lawyers can form to empower individuals and communities at risk of or who have directly experienced environmental harm or the adverse effects of climate change. These networks of lawyers can also help build up a body of legal practice and knowledge to equip other communities and individuals with information, legal advice and representation to enable them to pursue climate and environmental justice.

5 Vanuatu – International Court of Justice Advisory Opinion



5.1 Overview

Name of case study	Campaign for International Court of Justice Advisory Opinion on the obligations of States under international law to protect the rights of present and future generations
Type of strategy adopted	Application for advisory opinion of international court or tribunal
Forum	International Court of Justice
Litigious or non-litigious	Litigious
Year commenced	2019
Current status	Ongoing ³²⁴
Jurisdiction	International
Target entities	UN Member States
Key child / youth stakeholders	Pacific Islands Students Fighting Climate Change (PISFCC) ³²⁵
Number of people involved	Beyond the core group of 27 University of South Pacific (USP) law students who formed PISFCC in March 2019, the campaign now has members in every Pacific island country and from all levels of education, from primary and high schools to postgraduate university students
Environmental issue	Climate change, with special focus on rising sea levels as an area of particular concern for Pacific Island States

5.2 What was the case about?

Since March 2019, PISFCC has been campaigning for member nations of the Pacific Islands Forum (**PIF**) to put a proposal before the UN General Assembly for a resolution seeking the issuance of an advisory opinion by the International Court of Justice (**ICJ**) on a legal question of climate change and the human rights of present and future generations (**ICJAO Campaign**).

The ICJ is the apex court in the public international legal system and upon the request of the UN General Assembly or the UN Security Council, may issue opinions on “any legal question”.³²⁶ While other authorised organs of the UN may also request advisory opinions from the Court, the ICJ’s advisory jurisdiction in such cases is limited to legal questions arising within the scope of the activities of the authorised organ requesting the opinion.³²⁷ While advisory opinions are not binding at law, they do carry considerable legal weight and moral authority.³²⁸

However, for the UN General Assembly to request the ICJ to issue an advisory opinion on any legal question, a majority of member States (being at least 97 of the 193 members of the UN) must vote in favour of the request. In garnering sufficient support within the General Assembly for the ICJAO Campaign, PISFCC is supported by a transnational, youth-led umbrella organisation, World’s Youth for Climate Justice (**WYCJ**).

The legal question that will be posed to the Court by the General Assembly resolution (if adopted by a majority of States) is subject to negotiations by State parties, which is likely to occur privately. The question that WYCJ is seeking to pose to the Court is:

*What are the obligations of States under international law to protect the rights of present and future generations against the adverse effects of climate change?*³²⁹

Besides the ICJAO Campaign, the other core project of PISFCC is a programme to “Educate and Activate Youth”, which aims to raise awareness of the gravity of the climate crisis and activate a sense of activism in young people. Some concrete education and awareness activities employed by this programme include photo competitions, national heritage site visits and music videos.

5.3 How did the children stakeholders become aware of the environmental issue to which this case study relates?

As citizens of some of the countries most vulnerable to the adverse effects of climate change (in particular, rising sea levels), members of PISFCC are directly exposed to the realities of the climate crisis in their daily life.



5.4 Why did they choose to pursue this strategy?

The campaign began in 2019 when law students from USP enrolled in a class on environmental law decided to write letters to their countries' leaders to request their support for an initiative to take issues of climate change and human rights to the ICJ.³³⁰

The ICJAO Campaign is said to have been inspired by the ICJ's Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons in 1996,³³¹ as well as a former, unrelated campaign in 2011 by the President of Palau to seek an advisory opinion from the ICJ regarding the international obligations of a State to control greenhouse gas emissions. The specific question posed by Palau was:

*What are the obligations under international law of a State for ensuring that activities under its jurisdiction or control do not cause, or substantially contribute to, serious damage to another State or States?*³³²

Besides Palau, the Marshall Islands and Bangladesh have also at various points in time expressed intentions to seek an advisory opinion from the ICJ on the topic of climate change. However, none of these efforts have eventuated and the ICJAO Campaign, if successful, would result in the first every ICJ advisory opinion to consider the question of States' obligations in relation to climate change and human rights under international law.

While PISFCC recognise the risks of an unfavourable opinion, or lack of sufficient international support or active obstruction of attempts to gain enough support in the UN General Assembly, it has ultimately adopted this strategy for the following reasons:

- (a) an advisory opinion will help cement consensus on the scientific evidence of climate change, and ICJ findings of fact on climate change would provide persuasive precedential authority before other international and domestic courts and tribunals considering climate change-related claims;
- (b) it would provide an impetus for States to take more ambitious action under the Paris Agreement;
- (c) in issuing an advisory opinion, the ICJ could also help to reconcile and integrate hitherto disparate areas of international law, such as international human rights law and international environmental law;
- (d) the ICJ could potentially provide authoritative baselines for State action for climate change mitigation, as well as international cooperation and assistance; and
- (e) the findings of the ICJ on questions of climate science and law would have great precedential value for climate change proceedings before other international and domestic courts and tribunals.³³³

It is also significant that the PISFCC are pursuing an advisory opinion rather than campaigning for Vanuatu or other Pacific Islands States to commence an action under the ICJ's contentious jurisdiction. The ICJ is empowered to make two kinds of decisions: (i) a contentious decision; or (ii) an advisory opinion. However, contentious cases can only be commenced between States that have voluntarily accepted the jurisdiction of the ICJ. Neither of the world's two largest emitting nations – the United States and the People's Republic of China – have accepted the jurisdiction of the ICJ, limiting the potential efficacy of a judgment by the ICJ against States with the highest greenhouse gas emissions. Such cases also present additional challenges of proof. For example, a case for causation alleging that certain specific countries are responsible for climate change would present difficulties that are not present in advisory opinions, which can address the science of anthropogenic climate change and the effects of greenhouse gas emissions without having to consider thorny questions of specific attribution to particular nation states.

5.5 Who or what was the main access point for the children stakeholders in this case study to advocate for their rights and seek redress?

The campaign was started by law students and recent graduates from the University of the South Pacific. Using their legal education and institutional and social connections as students, PISFCC began a process of coalition building with organisations and other movements for climate action led by children and young people within the region and further afield, in order to build a larger international profile.

For the broader movement, which has now expanded to members in all Pacific Islands States, the legal knowledge and education of the core members of the campaign also provides an important access point for younger members of the movement who are less than university age.

Because the ICJ requires a mandate from an authorised body of the UN to issue an advisory opinion, and the UN General Assembly is explicitly authorised to ask the ICJ to take up a legal question, the PISFCC require a State to champion the ICJAO Campaign. In September 2021, Vanuatu's Prime Minister Bob Loughman stated that Vanuatu will raise the initiative at the UN General Assembly. Vanuatu is also currently forming a coalition of Pacific Islands States to champion the cause and build the required constituency in the UN General Assembly (that is, a majority or at least 97 of 193 States) to pass the resolution seeking the advisory opinion from the ICJ. PISFCC is also lobbying other States in the region to join the coalition. There are positive indications that the initiative would be supported among Pacific Islands States: in 2019, the 18 national leaders of the Pacific Islands Forum positively noted the proposal for an ICJ advisory opinion on climate change and human rights in the Forum Communique issued by the Pacific Islands Forum Secretariat at the conclusion of the Forum.³³⁴



At a non-governmental level, PISFCC's campaign is supported by an international network of "friends of the initiative," who comprise organisations such as Youth and Environment Europe, Arab Youth Sustainable Development Network, Ghana Youth Environmental Movement, UN Youth Impact, SOS UK and the National Alliance of Student Organisations in Romania. The international platform created by WYCY is also assisting PISFCC in gaining an international profile that can support its efforts to lobby more UN member States to support Vanuatu's resolution in the General Assembly in support of the ICJAO Campaign.

The campaign is also supported by over 40 legal scholars, climate change experts and other academics from around the world, including Professor Jorge Vinuales of the University of Cambridge, Professor Jacqueline Peel of the University of Melbourne, and Professor Wendy Jacobs of the Harvard Law School Emmett Environmental Law & Policy Clinic and an experienced environmental litigator.

5.6 What were the outcomes of pursuing this strategy?

As noted above, the ICJAO Campaign has been successful in gaining the support of the Government of Vanuatu, which is now championing the cause before the UN General Assembly. It remains to be seen whether the coalition of Pacific Islands States that Vanuatu is building in support of the campaign will be able to gain sufficient support for the advisory opinion.

5.7 Did the children stakeholders face any challenges or obstacles in pursuing this strategy?

In 2012, Palau's similar resolution failed in the UN General Assembly. Although the Legal Report / the Pacific Island Forum Brief address why the timing is better in 2021, a lack of international support is certainly a possible obstacle. Columbia University Law School Professor Michael Gerrard has noted that litigious routes in the ICJ in relation to climate change face similar obstacles, including the fact that the world's largest emitters (USA and China) do not submit to the ICJ's jurisdiction in this respect.³³⁵

According to the leaders of PISFCC, some of the main challenges faced by the campaign concern capacity building, resourcing and upskilling, which are particularly difficult in a purely youth-led and managed organisation.³³⁶

5.8 Have the children stakeholders experienced any backlash for pursuing this strategy?

From our review, we are not aware of PISFCC or any other children or young people involved in the ICJAO Campaign having experienced any backlash or reprisals for pursuing this strategy.



5.9 What are the implications of this strategy for the legal empowerment of children and young people in the Region?

This case study offers some important lessons for developing a legal empowerment strategy for advancing climate and environmental justice for children and young people in the Region:

- (a) Young people from different countries who are concerned about climate and environmental justice can connect at universities and other educational institutions and form transnational coalitions for advancing climate and environmental justice.
- (b) Law students and law graduates can facilitate the empowerment of other young people who may not have access to a legal education, by educating them about their rights, legal processes, national and international justice mechanisms, and building a campaign for seeking remedies before national and international courts and tribunals.
- (c) States can be responsive to the concerns of young people, particularly by embracing the voices of young people through institutionalised channels to inform decision-making around responses to the climate and environmental crisis.
- (d) Academics, lawyers, and legal experts can sponsor and support the climate and environmental justice initiatives of young people, and provide an even greater platform for building a public profile and gaining awareness for such initiatives.
- (e) States can also play an important role in championing the climate and environmental justice causes of their young citizens in international forums like the UN General Assembly, and can help with coalition building with other States to create sufficient support for providing international courts and tribunals with a mandate for opining on issues of international law.

6 Malaysia – Klima Action Malaysia



6.1 Overview

Name of case study	Klima Action Malaysia
Type of strategy adopted	Grassroots youth activism
Forum	Online and in-person protests
Litigious or non-litigious	Non-litigious
Year commenced	2019
Current status	Ongoing activism activities
Jurisdiction	Malaysia and East Asia and the Pacific region
Target entities	Malaysian Government
Key child / youth stakeholders	Malaysian young people, in particular women, indigenous people and other marginalised communities.
Number of people involved	—
Environmental issue	Climate change and environmental issues including haze pollution

6.2 What was the case about?

Klima Action Malaysia (**KAMY**) is a youth-led climate activist group in Malaysia established in 2019. It is focused on nurturing meaningful partnerships and strengthening constituencies across civil society organisations and vulnerable communities, such as women, indigenous people and young people, for people-led climate action.³³⁷ KAMY is run mainly by university students and young professionals in Malaysia.³³⁸ Its members are overwhelmingly young and female: 80% are below the age of 25 and 70% identify as women.³³⁹

Mission statement and key demands

KAMY's focus on climate and environmental justice for marginalised and indigenous communities informs its mission statement, which consists of the following eight key elements:

- (a) **Civil society facilitation** – holding discussions with civil society through grassroots organisations or groups in Malaysia to increase understanding of the impacts of the climate crisis on affected groups, and the work of NGOs and civil society organisations (CSOs);
- (b) **Citizen assemblies** – providing a platform for representatives from civil society to gather and make decisions democratically and gather requests to be presented to policymakers or other stakeholders;
- (c) **Coalition building** – building coalitions and action networks between youth groups, grassroots communities, CSOs and NGOs at the local, national, regional and global levels;
- (d) **Advocacy** – organising peaceful protests, rallies, discussions, documentaries, arts and customs, training and workshops, and other activities to raise public awareness and capacity building for active participation in tackling the climate crisis in Malaysia and lobbying for climate policies that are fair and equitable to people;
- (e) **Gender responsive** – make the principle of gender justice the core principle in increasing women's adaptation efforts to the impact of the climate crisis;
- (f) **Community resilience** – increase resilience of Orang Asli indigenous communities in their ability to seek assistance during disasters, reduce the risk of disasters and to also increase food sufficiency;
- (g) **People's Climate Inventory** – collect data from the community and disseminate accurate and reliable information through anecdotes, public surveys, translations, infographics and short videos, to formulate and document people-based demands and solutions;
- (h) **Access to climate information** – break down an urban and western narrative of climate discourse in Malaysia by increasing access to climate information among rural communities such as indigenous people, farmers, fishermen, as well as migrants and undocumented people.³⁴⁰

These eight key principles feed into KAMY's ten key demands, which are addressed to the Malaysian government:

- (a) Members of Parliament and Ministers should treat climate change as a crisis and declare a "state of emergency";
- (b) A just transition towards a low carbon, resilient and sustainable economy;
- (c) Strengthen the environmental legal framework, draft the Transboundary Haze Pollution Act, Climate Change Act and National Adaptation Plan;
- (d) Access to data transparency, urging accountability and integrity in all levels of the Government;
- (e) Prioritise adaptation centred on natural ecosystem-based solutions to adapt to the effects of climate change;

- (f) Integration of gender sensitive intervention in climate mitigation, adaptation and resilience;
- (g) Sustainable land use management that prioritises the environment and people over profit;
- (h) Justice for the Orang Asli in matters relating to land rights based on the principles of Free Prior Informed Consent;
- (i) Increase climate literacy in Malaysia; and
- (j) Sustainability, climate resilience and ESG (environmental, social and governance) as prerequisites for the approval of infrastructure projects.³⁴¹

Climate strikes and transnational coalition building

Since its establishment, KAMY has organised multiple climate strikes in Malaysia, including an event in September 2019 that coincided with the Global Climate Strike.³⁴² Since then, it has worked with other activist groups in the Region to organise the Asia Climate Rally in November 2020. The Asia Climate Rally attracted more than 7,000 participants across the region, both online and offline, across more than 10 countries.³⁴³ Through a livestream event on Facebook, the rally provided a platform for young indigenous activists from Malaysia and Indonesia, who are involved in advocating for climate and environmental justice in their communities.³⁴⁴

KAMY has also participated in events organised by Australian activists such as the #ProtectOurFutureFromFossilFuels Global Day of Action in March 2021, during which it has highlighted the climate impacts and climate justice movements in the global south.³⁴⁵

Access to climate information

A key focus for KAMY is translating climate and environmental information into a digestible format for the general

public and young people in Malaysia, including through infographics and climate change workshops and speaking events at schools and universities. This includes summarising and translating information from English to Bahasa Melayu, so that it is more widely accessible and can overcome structural barriers that prevent more people in Malaysia from accessing climate and environmental information.

KAMY has also adopted an innovative social media strategy that includes creating a podcast called “ALAMak!” to discuss and raise awareness around climate change and climate justice issues in Malaysia.³⁴⁶ Similarly, it has also created an online pocket guide for climate justice in Bahasa Melayu.³⁴⁷

Empowerment of Orang Asli indigenous communities and the campaign against de-gazettement of Kuala Langat North Forest Reserve

Another key focus for KAMY is empowering Orang Asli indigenous communities and indigenous young people in Malaysia. Since its inception, KAMY has organised events to spotlight unique issues faced by the Orang Asli in relation to the climate crisis.³⁴⁸ Relatedly, one of KAMY’s major projects has been to prevent the de-gazettement of Kuala Langat North Forest Reserve (KLNFR). The KLNFR was first gazetted as a protected forest reserve in 1927. However, in February 2020, the Selangor State Forestry Department announced plans to degazette the KLFNR,³⁴⁹ which would remove around 931 hectares of swamp forest reserve from protected list.³⁵⁰ KAMY and other NGOs formed the Defend Kuala Langat North Forest Reserve coalition (PHSKLU), which mobilised against the de-gazettement plans.

The de-gazettement plans cut across several of KAMY’s key priorities, as the KLFNR is a natural carbon sink and development of the de-gazetted area would contribute to climate change. Likewise, de-gazettement would involve the development of the traditional lands of local indigenous Temuan people and further displace these communities.³⁵¹

Strategies considered by KAMY and the PHSKLU ranged from efforts to showcase Temuan culture, to litigation.³⁵² The coalition developed a digital action toolkit for employing social media to pressure the Selangor State Government and key stakeholders to not proceed with the de-gazettement plans.³⁵³ This digital toolkit included posting pre-written tweets, using social media handles and tagging policymakers; use of hashtags, and sharing infographics concerning the impacts of de-gazettement on the rights of Temuan people. Other strategies employed included encouraging mass calling and emailing of local MPs.³⁵⁴

One of the most notable strategies employed in the campaign involved KAMY and other NGOs sending petition letters opposing the de-gazettement to 71 Members of Parliament (**MP**) in the Selangor state assembly. Each MP was given a deadline to respond before the next Selangor state assembly session was convened. A scorecard was posted on Greenpeace Malaysia's website to track which politicians had supported, rejected or ignored the petition letters.³⁵⁵

Transboundary haze

On the topic of transboundary haze, KAMY has organised sessions with Greenpeace campaigners to discuss the need for a transboundary haze law in Malaysia, as well as to spotlight trends in grassroots and transnational activism to detail what everyday citizens can do to address this environmental harm.³⁵⁶

Consultations with parliamentarians

KAMY is also part of a collective of civil society organisations and NGOs across Peninsula Malaysia that consult with parliamentarians who speak on environmental and climate issues in Malaysia's parliament. Consultations have covered topics including the need to educate politicians on climate and environmental matters. In these consultations, KAMY is able to offer a unique youth perspective.³⁵⁷

6.3 How did the children stakeholders become aware of the environmental issue to which this case study relates?

By her own account, the founder of KAMY, Ili Nadiah Dzulfakar, became aware of environmental and climate change issues through witnessing the loss of biodiversity and the deforestation of Malaysian rainforests and peatland in favour of monoculture palm oil plantations.³⁵⁸

Ili Nadiah Dzulfakar has been actively involved in community work, especially with indigenous communities in Malaysia, but started engaging in climate activism through her study of Environmental Science at university, where she learned about climate science from an atmospheric scientist. As she explains: *"The combination of these two experiences helped me develop the work I do today, providing a space for indigenous communities, especially women and youth to be recognised as active stakeholders in climate solutions."*³⁵⁹



6.4 Why did they choose to pursue this strategy?

KAMY was established by Malaysian young activist Ili Nadiah Dzulfakar and was born from her undergraduate studies in environmental science at Nottingham University in Semenyih in 2019.³⁶⁰ Inspired by international examples of youth-led climate change pressure groups such as the Sunrise Movement in the United States, Nadiah decided to adopt a similar agenda of protesting and engaging with political candidates in Malaysia to push for climate and environmental justice for vulnerable communities in Malaysia.³⁶¹

A key issue and motivation for Nadiah to create KAMY was a domestic media environment in Malaysia that she perceived to be largely silent on climate change issues. As she commented in a media interview: *“The media must help to disseminate more information about climate change. Most Malaysians don’t understand how the climate crisis is impacting their lives.”*³⁶²

6.5 Who or what was the main access point for the children stakeholders in this case study to advocate for their rights and seek redress?

A lot of the core members of KAMY are university students and young professionals. They are also supported by established NGOs including Greenpeace, 350.org and Amnesty International Malaysia.

Likewise, KAMY has been the beneficiary of grant funding in relation to some of its projects. In February 2021, the “Weaving Hopes for the Future” project led by KAMY, Gerimis Art Project and UK-based organisation Students for Global Health secured a 166,000 ringgit grant from the British Council under the A.R.C Challenge Malaysia Grant.³⁶³ The project focuses on

mentoring and cultivating leadership and organisational skills among Malaysian indigenous communities, especially women and young people, through creating art installations and other creative works inspired by the climate crisis and how it impacts on the lives of indigenous communities in Malaysia.³⁶⁴ The art installations and creative works created through the project were exhibited at COP26 in Glasgow in November 2021.³⁶⁵ This project not only showcased the worldview of Orang Asli communities, but also served as an innovative climate change communication strategy through art.³⁶⁶

6.6 What were the outcomes of pursuing this strategy?

As a result of KAMY and PHSKLU’s campaign to stop the de-gazettement of KLNFR, in September 2021, the Selangor State Government announced that it will stop proposed development plans for the KLNFR and re-gazette the forest. Of the 1,326 acres of the KLNFR, only 104 acres would be de-gazetted to house the Busut Baru Orang Asli village, which had previously been displaced from their original settlement in 1994 to make way for construction of Kuala Lumpur International Airport.³⁶⁷

KAMY has also gained access to domestic parliamentarians and international forums.

6.7 Did the children stakeholders face any challenges or obstacles in pursuing this strategy?

As KAMY is a relatively young organisation, its ability to mobilise and engage in activism has been impacted by the COVID-19 pandemic.

A key issue for KAMY’s leaders is also the lack of information about climate change available in Malaysian media.

6.8 Have the children stakeholders experienced any backlash for pursuing this strategy?

KAMY organisers have reported cyber-attacks, trolling and other online harassment in relation to their advocacy activities.³⁶⁸ The founder of KAMY, Ili Nadiah Dzulfakar, noted in media interviews that some of these attacks have caused members of KAMY to become demotivated, and at worst, some members have experienced mental health impacts.³⁶⁹ In response, the organisation has prioritised creating a supportive environment for its members.

6.9 What are the implications of this strategy for the legal empowerment of children and young people in the Region?

In December 2020, KAMY participated in a Commonwealth Youth Council event to discuss the “Impacts and opportunity of climate change on youth involvement and engagement in the Asian region”.³⁷⁰ Aroe Ajoeni represented KAMY at the session and reflected on her experience organising with other young people online. Some of her key reflections include:

- (a) Through the COVID-19 pandemic, the Asia Climate Rally that occurred in November 2020 caused a shift from protesting on the streets to mobilising fully online, but this showed that young people can meaningfully organise from everywhere and that phone cameras and online toolkits are tools for change, and Zoom and Google Meets are spaces to strategise;³⁷¹
- (b) Online platforms provide an alternative space to speak up and connect with young people who would not normally get the chance to meet, especially among environmental activists;³⁷²
- (c) Involvement by children and young people has paved a new way for climate activism, through innovative uses of digital platforms such as using TikTok and Instagram livestreams as media to educate people about climate change;³⁷³
- (d) It is important to train young people with advocacy skills, including writing, communication, and persuasion skills, so that they can speak to and with their communities in a language that they can understand.³⁷⁴

Some other key lessons from this case study for developing a legal empowerment strategy for advancing climate and environmental justice for children and young people in the Region include:

- (a) More established and well-resourced NGOs and other civil society actors can support youth-led organisations to scale up and build capacity to advance climate and environmental justice.
- (b) Youth-led organisations can help empower young people through translating and disseminating child-friendly and readily understandable information about climate change and environmental issues, for example through social media campaigns, infographics and digital toolkits.
- (c) Empowerment of children and young people can also aid the empowerment of other marginalised groups within society, such as indigenous people, to advance climate and environmental justice.
- (d) Through online activism and mobilising via social media, children and young people can build regional and transnational coalitions with their peers in other countries to collectively advance climate and environmental justice.

7 Mongolia – Air pollution mapping project



7.1 Overview

Name of case study	Youth-led air pollution mapping in Mongolia
Type of strategy adopted	Volunteer project
Forum	Online and in-person air pollution mapping and educational activities
Litigious or non-litigious	Non-litigious
Year commenced	2015
Current status	Ongoing project
Jurisdiction	Mongolia
Target entities	Children in Ulaanbaatar and across Mongolia
Key child / youth stakeholders	<ol style="list-style-type: none"> (1) Scout Association of Mongolia (Mongolyn Skautyn Kholboo) (MSK) (2) Youth for Clean Air Network (YouCAN) (3) Local adolescent air pollution mappers in Ulaanbaatar and Bayankhongor Province
Number of people involved	More than 1,300 across Mongolia
Environmental issue	Air pollution and climate change

7.2 What was the case about?

YouCAN is a programme launched by UNICEF, MSK, the Mongolian Government and other partners in 2020 to support adolescent-led air quality monitoring and dissemination of evidence-based information directed at reducing the risks of air pollution in Mongolia.³⁷⁵ It also acts as a youth platform for advocacy and engagement on climate change issues.³⁷⁶ Through the YouCAN project, UNICEF and its partners conducted a national survey on climate change among young people, with the aim of presenting the responses to national and international leaders and policymakers.³⁷⁷ Through online dialogues organised under the auspices of the YouCAN programme, young activists have been able to engage with policymakers and parliamentarians in Mongolia.³⁷⁸

YouCAN was formally launched through an online event in June 2020, which reached young people in urban and rural areas throughout the country. During 2021, the activities of YouCAN are planned to expand to four additional provinces and two districts in Ulaanbaatar for in-person training and implementation, with the longer-term vision of UNICEF and its partners being to scale up the initiative, in particular by enabling young people to be agents of change.

YouCAN is the culmination of a series of earlier youth-led local and national initiatives in Mongolia to address air pollution. In 2015, UNICEF and its public health partners began researching air pollution-related health impacts on children living in Ulaanbaatar. This research led to the Mongolia National Center for Public Health and international partners developing a road map for reducing the health impacts from air pollution, the transition to clean energy, and raising awareness on how the Mongolian government can improve air quality to benefit children and adolescents. In supporting this programme, UNICEF engaged with adolescents to research how air pollution impacts them.³⁷⁹

In 2019, the Air Pollution Mappers Programme managed by MSK began air pollution data collection activities. The programme is a youth-led initiative involving 75 adolescents from 25 high schools in Ulaanbaatar, who each volunteered as researchers. MSK



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managed implementation of the programme, while school administrators oversaw activities and supported logistics. High school staff – teachers and social workers – facilitated and supported the youth mappers, and MSK scouts and other youth volunteers led the teams of youth mappers. Through this programme, participants learned about the sources of air pollution in their community; global guidelines and plans for reducing air pollution and the application of these guidelines and plans in Mongolia; how to measure air pollution levels in their community; how to develop team strategy plans to respond to air pollution; and how to do digital mapping, photography and blogging to communicate their work and raise awareness about air pollution issues.³⁸⁰

Through this programme, children and young people in Mongolia were able to raise awareness about air pollution and advocate for change. Youth mappers actively participated in social campaigns, including social media posts, school events, and province-level events to empower volunteers.³⁸¹ MSK, as the national scouts association in Mongolia, also used its platform to educate more than 1,000 adolescents about air pollution issues at the MSK Jamboree in mid-2019.³⁸² With the onset of COVID-19 and public health restrictions in Mongolia in 2020, young volunteers transitioned to online activities and awareness raising. Rather than conducting air pollution testing in person, volunteers relied on Air Quality Index data and used social media to monitor and communicate up-to-date air quality data.³⁸³

Beyond the capital city of Ulaanbaatar, UNICEF has also supported young volunteers to address air pollution and smog issues in the province of Bayankhongor – the most polluted province in Mongolia.³⁸⁴ In 2019, the provincial government approved a clean air action plan and a Smog Free Bayankhongor Programme to be achieved by 2022, with the main objective of protecting maternal and child health against the adverse effects of air pollution.³⁸⁵ As part of this programme, the Authority of Family, Child and Youth Development, local government authorities in Bayankhongor and UNICEF, recruited and trained 300 young volunteers and 90 other community volunteers to promote a smog-free province. In the first year of the initiative, volunteers reached nearly 6,000 people (or approximately 20% of the province's population) through social media and face-to-face interactions.³⁸⁶

In 2021, YouCAN members assisted to establish a 'Teen Parliament', which was launched jointly with the Parliament of Mongolia's Sub-Committee on Sustainable Development Goals. The Teen Parliament has been highly active in publicising the YouCAN message to young people through social media, organising advocacy activities, and participating in training on climate change and air pollution, parliamentary processes, and leadership. The Teen Parliament has also engaged with members of Parliament, including through high-level consultations on rights to a safe, clean, healthy and sustainable environment.

7.3 How did the children stakeholders become aware of the environmental issue to which this case study relates?

Mongolia is a country where children and adolescents are highly impacted by air pollution. Air quality levels in Ulaanbaatar during cold winter months have been recorded at levels averaging 500 ug / m³,

and even higher than 1,000 ug / m³, which are 20-40 times higher than World Health Organisation Recommended levels.³⁸⁷ Air pollution is particularly severe during winter, as many suburban households use raw coal to heat their houses or traditional *gers*.³⁸⁸

Children are most vulnerable to the adverse health effects of air pollution. In Mongolia, pneumonia is now the second-leading cause for child mortality for children under the age of 5.³⁸⁹ Studies have also found that children living in highly polluted districts of central Ulaanbaatar have 40% lower lung function than children living in rural areas in the country.³⁹⁰

7.4 Why did they choose to pursue this strategy?

The youth-led air pollution mapping project arose from a collaborative research project between the Mongolian National Center for Public Health, various international partners, and UNICEF in response to the poor air quality experienced in urban areas of Mongolia and its health impacts on children and young people. UNICEF championed the air pollution mapping project to equip young people with the tools, skills and knowledge to measure, research and record how air pollution affects them.

7.5 Who or what was the main access point for the children stakeholders in this case study to advocate for their rights and seek redress?

YouCAN is supported by UNICEF, MSK and the Swiss Agency for Development and Cooperation, among other national and international partners.³⁹¹ Local government authorities have also supported air pollution mapping programmes and volunteerism by young people, for example, in the Smog-Free Bayankhongor Programme discussed above.

7.6 What were the outcomes of pursuing this strategy?

Through these volunteer initiatives to map air pollution in Mongolia, young people have been provided with a platform to engage in discussions around environmental issues and how to address these issues. By providing access to air pollution data and receiving training in collecting and interpreting such data, children and young people have been empowered to understand the environmental issues affecting them and to start considering potential solutions. This is perhaps the first stage of a legal empowerment strategy for young people in Mongolia.

Citizens Representative Khurals in 16 provinces and 3 districts of Ulaanbaatar city have signed a commitment to support YouCAN's activities, demonstrating a strong collaboration with local and provincial governments across the country.

7.7 Did the children stakeholders face any challenges or obstacles in pursuing this strategy?

One of the major challenges faced by children and young people involved in the project was the impact of the COVID-19 pandemic, which forced much of their air pollution mapping activities online and prevented the ability to gather air pollution data together.

7.8 Have the children stakeholders experienced any backlash for pursuing this strategy?

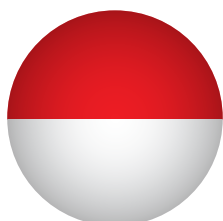
It is not clear from open-source information whether the young people involved in these air pollution mapping projects have experienced any backlash.

7.9 What are the implications of this strategy for the legal empowerment of children and young people in the Region?

This case study offers some important lessons for developing a legal empowerment strategy for advancing climate and environmental justice for children and young people in the Region:

- (a) Through youth-targeted interventions, young people can learn new knowledge and skills to communicate, act and make positive difference in their communities and advocate for child-sensitive and rights-based environmental policies.
- (b) International non-governmental organisations and foreign aid donors can play an important role in creating opportunities for environmental education and legal empowerment through non-litigious mechanisms. By partnering with local child and youth-led organisations involved in climate and environmental advocacy, international non-governmental organisations and foreign aid donors can also create a platform for young people to participate in policy processes like developing clean air plans.
- (c) Teachers and educators can help to spread awareness about environmental and climate change issues, and help equip children and young people with the skills and tools to advocate for environmental protection and climate change action. For example, in Viet Nam, the Vice Minister of Education and Training and UNICEF Viet Nam have launched a UN-accredited teacher training programme that highlights how children are impacted by climate change and air pollution, how their resilience can be strengthened, and how they can address this challenge. UNICEF provides technical support for this programme.³⁹²

8 Indonesia – Bye Bye Plastic Bags campaign



8.1 Overview

Name of case study	Bye Bye Plastic Bags
Type of strategy adopted	Social movement for legislative / policy change
Forum	<p>(1) Social media (including TED Talk,³⁹³ Facebook,³⁹⁴ Instagram³⁹⁵)</p> <p>(2) United Nations Ocean Conference 2017; and</p> <p>(3) IMF World Bank Forum, Bali, 2018.³⁹⁶</p>
Litigious or non-litigious	Non-litigious
Year commenced	2013
Current status	Ongoing
Jurisdiction	Indonesia
Target entities	Provincial and national governments in Indonesia
Key child / youth stakeholders	<p>(1) Melati Wijsen, Indonesia (18 years old)</p> <p>(2) Isabel Wijsen, Indonesia (16 years old)</p>
Number of people involved	2 (Melati and Isabel Wijsen), although the movement has since expanded to more than 50 teams around the world, more than 60,000 social media followers, and over 1,000 applications to start new campaigns
Environmental issue	Environmental pollution caused by single-use plastic products

8.2 What was the case about?

The Wijsen sisters, Melati and Isabel, began the Bye Bye Plastic Bags campaign (**BBPB**) in 2013 when they were 10 and 12 years old respectively. Inspired by similar movements for banning single-use plastic bags and other disposable products around the world, and after a lesson at school about influential world leaders like Nelson Mandela and Mahatma Gandhi, the sisters decided to take action to address the issue of single-use plastic pollution in their home island of Bali.³⁹⁷

In the initial stages of BBPB, the sisters mobilised friends and started an online petition to ban the use of single-use plastics in Bali. To gain traction, they targeted tourists passing through Ngurah Rai International Airport, helping to swell the number of signatures to over 100,000.³⁹⁸

BBPB spread awareness through school and community workshops and beach clean-up campaigns, including a large-scale clean-up in February 2017 involving 12,000 people cleaning up 55 beaches across Bali, and collecting over 40 tonnes of rubbish.³⁹⁹ Related to the clean-up and ban of single-use plastics campaigns, BBPB also engaged in the following major projects to support the transition to reusable products and encourage environmental education:

- (a) **Pilot Village** – Every month, BBPB distribute alternative and re-usable bags to shop owners in a pilot village in Bali home to 800 families, to encourage the use of these products instead of single-use plastics.
- (b) **River Booms** – Partnering with students from the Green School Bali, BBPB encourages students to create river 'booms' (or chains) using recycled materials, to capture trash in local waterways and prevent this from flowing into the ocean. The program encourages students and young people to 'do it yourself' and BBPB have created instructional materials to educate other young people around the world to make their own river booms.⁴⁰⁰

- (c) **Education Booklet** – BBPB have prepared educational materials in Bahasa Indonesia aimed at elementary school children in Indonesia to educate them about the problems associated with plastic bags. To date, BBPB have spoken to over 100,000 school students and donated more than 8,000 booklets to schools.

- (d) **Mountain Mamas** – In 2017, BBPB also initiated a social enterprise with women from rural areas of Bali to make hand-made alternative and re-usable plastic bags using collected and donated cloth materials.⁴⁰¹

Through this activism, BBPB gained a public profile and local media attention. The Governor of Bali at the time, Made Mangku Pastika, initially resisted the sisters' attempts to meet with him to discuss their campaign. Inspired by Mahatma Gandhi's struggle against British colonialism in India, the sisters staged a mogok makan fast, vowing not to eat from dawn to dusk until the Governor agreed to meet with them.⁴⁰² The food strike garnered significant attention on social media, prompting the Governor of Bali to meet with them. This engagement with the Governor snowballed into regular meetings between the Wijsen sisters and representatives of the local environment department, which culminated in the Governor signing a Memorandum of Understanding with BBPB in 2015, to work towards the elimination of plastic bags in Bali by 2018.⁴⁰³

Although the Balinese Provincial Government did not deliver on this undertaking, the Wijsen sisters continued to engage with and pressure government at local, municipal and national levels, and started learning about legislative procedures and draft regulations.⁴⁰⁴



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8.3 How did the children stakeholders become aware of the environmental issue to which this case study relates?

The Wijsen sisters were motivated to act due to the prevalence of plastic pollution Bali's waterways and coastline, and through their education at school. Annual monsoon weather causes marine pollution to flow from the densely populated island of Java through tidal currents to Bali, meaning that the island's beaches and waterways are particularly affected by plastics pollution.⁴⁰⁵

8.4 Why did they choose to pursue this strategy?

Both sisters attend the Green School Bali, where they were inspired by a lesson on global changemakers like Mahatma Gandhi and Nelson Mandela and decided to take action in their own hands to address the persistent issue of single-use plastics pollution in Indonesia.⁴⁰⁶ The Green School is a school that focuses on sustainability education and providing children with individual agency.⁴⁰⁷

8.5 Who or what was the main access point for the children stakeholders in this case study to advocate for their rights and seek redress?

BBPB is part of a larger coalition of NGOs and other organisations in Bali called One Island One Voice (Satu Pulau, Satu Suara) (OIOV). OIOV's activism focuses on reducing waste on Bali and solving the persistent problem of plastics pollution. In the four years since it was established in 2017, OIOV as gathered over 57,000 people



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in 430 locations across Bali in regular beach clean-ups, and collected over 150 tonnes of plastics.⁴⁰⁸

BBPB has also partnered with and been provided with a platform by international organisations including the World Wide Fund for Nature (WWF), the International Monetary Fund, and the United Nations. Through its partnership with WWF, BBPB runs virtual pop-up workshops to educate Indonesian young people about plastic pollution and how to take action to address this issue.⁴⁰⁹

As discussed above, a key champion of the BBPB campaign has been the Government of Bali and relevant ministries such as the local environment ministry.

The campaign is also supported and sponsored by local and international businesses and non-profit organisations, including: Hilton Hotels; Finns Bali Surf Club; the German Federal Association of Marine Garbage (Bundesverband Meeresmüll e.V.); and the German Ocean Foundation (Deutsche Meeresstiftung).



8.6 What were the outcomes of pursuing this strategy?

In December 2018, the Governor of Bali, Wayan Koster, announced a new law to ban single-use plastics.⁴¹⁰ Gubernatorial Regulation (Pergub) No.97/2018, which implements the ban, is aimed at producers, distributors, suppliers and businesses to phase out the use of single-use plastics and substitute them with other materials.⁴¹¹ While the Regulation provided a six-months' grace period for compliance, from mid-2019 onwards administrative sanctions now apply to non-compliance with the ban. However, reports suggest that enforcement of the ban has been lax.⁴¹²

Similar measures have been adopted by over 30 other cities and regions across Indonesia, while Jakarta also introduced a ban on single-use plastic bags at shopping centres, convenience stores and traditional markets from 1 July 2020.⁴¹³

The Wijsen sisters have also taken their experience of social mobilisation and activism global. Their latest project, YOUTHTOPIA,⁴¹⁴ leverages their experience gained from the BBPB campaign and is designed to be a global online platform for young change-makers that will host on-the-ground local workshops and training to empower children and young people to engage in activism and participate in government and policymaking processes, including education about how to engage with government officials, leadership skills and public speaking.⁴¹⁵

8.7 Did the children stakeholders face any challenges or obstacles in pursuing this strategy?

As discussed above, the Wijsen sisters faced some initial resistance from the Governor of Bali and faced difficulty gaining access to local policymakers. However, following their high profile hunger strike campaign and related media attention, they were able to meet with and eventually gain the support of the Governor and other key government stakeholders in Bali, including representatives from the local environment ministry.

The campaign has also faced challenges associated with stay-at-home orders and other public health measures imposed in relation to the COVID-19 pandemic. However, like other activists operating under pandemic conditions, BBPB has transitioned a lot of its advocacy to online platforms, including its latest project, YOUTHTOPIA.

8.8 Have the children stakeholders experienced any backlash for pursuing this strategy?

It is not clear from open-source information whether any of the young people involved in BBPB have experienced any backlash in relation to their advocacy activities.

8.9 What are the implications of this strategy for the legal empowerment of children and young people in the Region?

This case study offers some important lessons for developing a legal empowerment strategy for advancing climate and environmental justice for children and young people in the Region:

- (a) Environmentalism and sustainability education at schools can build consciousness and awareness about climate and environmental issues, which can motivate children and young people to take action to advance climate and environmental justice.
- (b) Young people can play an important role in empowering other young people, through both mobilising youth-led campaigns for environmental and climate action, as well as using their own experiences of advocacy to educate other young people about how to build a movement for and how to participate in action for climate and environmental justice. Successful examples of youth-led environmental activism can be used as a precedent for young people in other countries and regions to adopt similar strategies and build transnational coalitions that can build sufficient groundswell for positive action on climate and environmental justice internationally.
- (c) Social media plays an integral role in activating and connecting young people to pursue action on climate and environmental justice issues. Social media not only provides young people with a platform for advocacy, but also can create sufficient pressure on policymakers to take action to address children's environmental grievances.
- (d) Businesses can also support the empowerment of young people through sponsoring youth-led environmental and climate change causes and campaigns. The interests of young people and private businesses may align in advocating for and pursuing action to address climate and environmental issues.



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Endnotes

- ¹ See page [53] of Schedule 1.
- ² See page [60] of Schedule 1.
- ³ See page [65] of Schedule 1.
- ⁴ See page [70] of Schedule 1.
- ⁵ See page [77] of Schedule 1.
- ⁶ See page [82] of Schedule 1.
- ⁷ See page [88] of Schedule 1.
- ⁸ See page [92] of Schedule 1.
- ⁹ 'Climate Justice' United Nations (Web Page) <<https://www.un.org/sustainabledevelopment/blog/2019/05/climate-justice/>> ('Climate Justice United Nations'); 'What is climate justice?' Take Climate Action (Blog Post) < <https://takeclimateaction.uk/resources/what-climate-justice>> ('Take Climate Action Blog').
- ¹⁰ 'Climate Justice' United Nations (Web Page) <<https://www.un.org/sustainabledevelopment/blog/2019/05/climate-justice/>>; Submission of the Office of the High Commissioner for Human Rights <<https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>>.
- ¹¹ Climate Justice United Nations (n 9); Office of the High Commissioner for Human Rights, 'Understanding Human Rights and Climate Change' Submission to the 21st Conference of the Parties United Nations Framework Convention on Climate Change, 2015.
- ¹² Mohai, Paul, David Pellow, and J. Timmons Roberts, 'Environmental justice' (2009) Annual review of environment and resources 34, 405-430; 'EPA's Role in Promoting International Human Rights, Rights of Indigenous Peoples, and Environmental Justice' EPA (Blog Post) <<https://www.epa.gov/environmentaljustice>>;
- ¹³ UNICEF, Provision of legal aid to children on the move in Europe and Central Asia (Report, October 2020) 8-9; UNICEF ECARO, Guidelines on Child-Friendly Legal Aid (Report, October 2018) 6; UNICEF, Child-Friendly Legal Aid in Africa (Report June 2011) 2; United Nations Office on Drugs and Crime, Global Study on Legal Aid (Global Report, October 2016); United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, GA Res 67/187, UN Doc A/RES/67/187 (28 March 2013, adopted 20 December 2012).
- ¹⁴ The Case Studies featured in this Report are: (1) the Communication to the Committee on the Rights of the Child (Global) (see page [38] of Schedule 1); (2) the Sharma v Minister for the Environment case (Australia) (see page [45] of Schedule 1); (3) the Minors Oposa v Factoran case (Philippines) (see page [49] of Schedule 1); (4) the Klity Creek litigation (Thailand) (see page [53] of Schedule 1); (5) the Pacific Islands Students Fighting Climate Change campaign for an International Court of Justice Advisory Opinion (Vanuatu / Pacific Islands) (see page [60] of Schedule 1); (6) Klima Action Malaysia (Malaysia) (see page [64] of Schedule 1); (7) the youth-led air pollution mapping project (Mongolia) (see page [70] of Schedule 1); and (8) the Bye Bye Plastic Bags campaign (Indonesia) (see page [74] of Schedule 1).
- ¹⁵ Refer to the Glossary at page 4 for the definition of "litigious" case studies.
- ¹⁶ Refer to the Glossary at page 4 for the definition of "non-litigious" case studies.
- ¹⁷ King & Wood Mallesons and UNICEF, Children's rights to a healthy environment in East Asia & the Pacific (Discussion Paper, September 2020) ('Discussion Paper').
- ¹⁸ United Nations Environment Programme, Principles and Policy Guidance on Children's Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region (Report, October 2021) 17-18 ('Principles and Policy Guidance').

- ¹⁹ Report of the UN Secretary General on Legal Empowerment of the poor and eradication of poverty, UN DOC A/64/133 (July 2009).
- ²⁰ Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 17 ('CRC').
- ²¹ Paris Agreement, opened for signature 22 April 2016, [2016] ATS 24 (entered into force 4 November 2016) preamble ('Paris Agreement').
- ²² The authors presented preliminary research findings at the sixth session of the Civic Engagement Conference concerning "Climate and environmental Justice for and by Children and Young People" on 29 October 2021: World Vision and UNICEF, Building Pathways to Empowerment – Conference on Young People's Rights to Civic Engagement in East Asia and the Pacific Region (Report, December 2021).
- ²³ Survey results were filtered to exclude incomplete survey responses and responses from participants aged under 16 or over 24 years. These age-restricted filters were applied to survey results based on child data protection and ethical considerations.
- ²⁴ Refer to the Glossary at page 4 for the definition of "litigious" case studies.
- ²⁵ Refer to the Glossary at page 4 for the definition of "non-litigious" case studies.
- ²⁶ 'East Asia & Pacific' UNICEF (Web Page) <<https://www.unicef.org/eap/>>.
- ²⁷ UNICEF and SNU Medicine, Children's Environment and Health in East Asia and the Pacific, (Discussion Paper, January 2020) 11.
- ²⁸ See the detailed case study of Klima Action Malaysia in Schedule 1 below.
- ²⁹ See sections 4.2, 4.4 and 5.1 of this Report.
- ³⁰ See section 5.4 of this Report.
- ³¹ See Part III: Key barriers to the legal empowerment of children in the Region of this Report.
- ³² See Part V: Risks faced by children when advancing climate and environmental justice causes of this Report.
- ³³ See Schedule 1 of this Report.
- ³⁴ See Part IV: Key opportunities for legal empowerment in the Region of this Report.
- ³⁵ See Part IV: Key opportunities for legal empowerment in the Region of this Report.
- ³⁶ See Part VI: Conclusion and recommendations of this Report.
- ³⁷ Consistent with Article 29 of the CRC, and Article 29(e) in particular.
- ³⁸ Consistent with Article 12(1) of the CRC.
- ³⁹ Consistent with Article 12(2) of the CRC.
- ⁴⁰ Consistent with Article 2(1) of the CRC.
- ⁴¹ 'East Asia & Pacific' UNICEF (Web Page) <<https://www.unicef.org/eap/>>.
- ⁴² See David Eckstein, Vera Kunzel and Laura Schafer, Global Climate Risk Index 2021 (Briefing Paper, January 2021) 13.
- ⁴³ See UNICEF, The Climate Crisis is a Child Rights Crisis, (Report, August 2021) ('Climate Crisis Report'). The predicted impacts of climate change on children and youth in the Region include the following: 142 million children will be highly exposed to water scarcity; 121 million children will be highly exposed to coastal flooding; 210 million children will be highly exposed to cyclones; 52 million children will be highly exposed to climate-related diseases; 243 million children will be highly exposed to heatwaves; and 461 million children will be highly exposed to air pollution above levels considered safe by the World Health Organisation.

- ⁴⁴ According to the Children’s Climate Risk Index (CCRI) recently developed by UNICEF, several countries in the Region including Philippines, Viet Nam and Cambodia are classified as ‘High Risk’ in terms of children’s vulnerability to climate change. The CCRI is the first ever children-specific climate risk index and has been developed using high-resolution geographical data to evidence how many children are currently exposed to climate and environmental hazards: See Climate Crisis Report (n 43).
- ⁴⁵ A recent UNICEF report found that only about 22% of national climate strategies from countries in the Region are child-inclusive: UNICEF, Making Climate and Environment Policies for & with Children and Young People, (Discussion Paper, November 2021).
- ⁴⁶ ‘AR6 Synthesis Report: Climate Change 2022’, Intergovernmental Panel on Climate Change, (Web Page) <<https://www.ipcc.ch/report/sixth-assessment-report-cycle/>>.
- ⁴⁷ Save the Children, Born into the Climate Crisis: Why We Must Act Now to Secure Children’s Rights, (Report, September 2021) (‘Save the Children Report’) 22.
- ⁴⁸ Ibid 23.
- ⁴⁹ Ibid 24.
- ⁵⁰ UNICEF and SNU Medicine (n 27).
- ⁵¹ Ibid 11.
- ⁵² World Health Organisation, Air pollution and child health: prescribing clean air (Situation Report, July 2018).
- ⁵³ Rapid urbanisation and extensive use of raw coal for heating during harsh winter months have made Ulaanbaatar one of the most polluted cities in the world: See, eg, Emily Kwon, ‘Mongolia’s Capital Banned Coal To Fix Its Pollution Problem. Will It Work?’, NPR (online, 20 July 2019) <<https://www.npr.org/2019/07/30/727688757/mongolias-capital-banned-coal-to-fix-its-pollution-problem-will-it-work>>.
- ⁵⁴ See the detailed case study of youth-led air pollution mapping at page [70] of Schedule 1 below.
- ⁵⁵ See the detailed case study of the Klity Creek litigation at page [53] of Schedule 1 below.
- ⁵⁶ (1993) 33 ILM 173 (‘Oposa Case’).
- ⁵⁷ See the detailed case study of the Minors Oposa v Factoran case at page [49] of Schedule 1 below.
- ⁵⁸ See the detailed case study of Klima Action Malaysia in Schedule 1 below.
- ⁵⁹ The 71 heads of state and government and 88 other senior officials in attendance declared that they would work for common measures for the protection of the environment, at all levels, so that all children can enjoy a safer and healthier future: World Declaration on the Survival, Protection and Development of Children, UN Doc UNE/ICEF(063.1)/W67 (30 September 1990) [20(9)].
- ⁶⁰ States declared that they would “give every assistance to protect children and minimise the impact of natural disasters and environmental degradation on them”. The declaration also acknowledged that a number of environmental problems and trends, including global warming, ozone layer depletion, air pollution and hazardous waste, need to be addressed to ensure the health and well-being of children (at [26]); A World Fit for Children, GA Res S-27/2, UN Doc A/RES/S-27/2 (11 October 2002) [7(10)].
- ⁶¹ Human Rights Council, Human rights and climate change, 32nd sess, Agenda Item 3, UN Doc A/HRC/RES/32/33 (18 July 2016, adopted 1 July 2016) 2, 4 [5].
- ⁶² Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc A/HRC/37/58 (24 January 2018).
- ⁶³ ‘Draft general comment No. 26 on children’s rights and the environment with a special focus on climate change’ Office of the High Commissioner on Human Rights (Web Page) <<https://www.ohchr.org/EN/HRBodies/CRC/Pages/GC26-Environment.aspx>> (‘Draft GC26’).
- ⁶⁴ ‘General comment on children’s rights and the environment with a special focus on climate change: Concept note’ Office of the High Commissioner on Human Rights (Web Page) <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRC_GC26_concept_note.aspx> (‘Concept Note’).
- ⁶⁵ Ibid.

- ⁶⁶ To date, submissions have been received from 19 States Parties, including China and the Federated States of Micronesia. See: Draft G26 (n 63).
- ⁶⁷ ‘Consultations’ Child Rights Environment (Web Page) <<https://childrightsenvironment.org/consultation/>>.
- ⁶⁸ See Human Rights Council, The human right to a safe, clean, healthy and sustainable environment, UN DOC A/HRC/48/L.23/Rev.1 (5 October 2021).
- ⁶⁹ See Human Rights Council, Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, GA Res 48/14, UN DOC A/HRC/RES.47/14 (13 October 2021, adopted 8 October 2021).
- ⁷⁰ Discussion Paper (n 17) [2.3]. See also Thoko Kaime, ‘Children’s Rights and the Environment’ in Kilkelly, Ursula and Liefwaard, Ton (eds) *International Human Rights of Children* (Springer, 2019) 563.
- ⁷¹ The ASEAN Declaration expressly recognises a right to a safe, clean, healthy and sustainable environment (art 28(f)), as well as a right to development that equitably meets the environmental needs of present and future generations (art 35), via development programmes aimed at environmental protection and sustainability (art 36). The ASEAN has also adopted the Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children; and the ASEAN Declaration on the Rights of Children in the Context of Migration.
- ⁷² See, eg, Constitution of the Republic of Fiji 2013 art 40(1); Constitution of the Republic of Indonesia 1945 art 28H(1); Constitution of the People’s Republic of Mongolia art 16(2); Constitution of the Socialist Republic of Viet Nam 2013, art 43.
- ⁷³ Ibid
- ⁷⁴ Discussion Paper (n 17) [3.6]-[3.7].
- ⁷⁵ Discussion Paper (n 17) [3.7].
- ⁷⁶ GA Res 17/18, UN Doc No. A/RES/66/138 (19 December 2011) (‘Optional Protocol’).
- ⁷⁷ Optional Protocol art 1.
- ⁷⁸ Mongolia ratified in 2015; the Marshall Islands ratified in 2019; Samoa ratified in 2016; and Thailand ratified in 2012. See ‘Depository: Status of Treaties, Chapter IV Human Rights 11. d Optional Protocol to the Convention on the Rights of the Child on communications procedure’ United Nations Treaty Collection (Web Page) <https://treaties.un.org/pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-11-d&src=IND>.
- ⁷⁹ Optional Protocol art 5.
- ⁸⁰ Optional Protocol art 7(e).
- ⁸¹ Optional Protocol art 7(h).
- ⁸² See the Case Study concerning the Communication to the Committee on the Rights of the Child at page [38] of Schedule 1.
- ⁸³ The Committee found that it was unable to rule on whether these States had violated their respective obligations under the CRC because the complaints procedure under the Optional Protocol only permits petitions where all available domestic legal remedies have already been exhausted (unless domestic remedies are unreasonably prolonged or unlikely to provide effective relief): Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019, UN Doc CRC/C/88/D/104/2019 (8 October 2021) [10.21] (‘Sacchi v Argentina’); Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 107/2019, UN Doc CRC/C/88/D/107/2019 (8 October 2021) [9.20] (‘Sacchi v Germany’); Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 106/2019, UN Doc CRC/C/88/D/106/2019 (8 October 2021) [10.20] (‘Sacchi v France’); Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 108/2019, UN Doc CRC/C/88/D/108/2019 (8 October 2021) [9.20] (‘Sacchi v Turkey’); Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 105/2019, UN Doc CRC/C/88/D/105/2019 (8 October 2021) [10.21] (‘Sacchi v Brazil’).

- ⁸⁴ Principle and Policy Guidance (n 18)
- ⁸⁵ Principle 8 provides that Children have the right to access effective remedies for violations of their rights arising from environmental harm from all actors that cause such harm. Principle 9 provides that children have the right to be protected from threats, harassment, intimidation, and any other reprisals when exercising their rights to a safe, clean, healthy and sustainable environment and when they seek access to justice.
- ⁸⁶ Principle and Policy Guidance (n 18) 10, Principle 31.
- ⁸⁷ Ibid 10, Principle 32.
- ⁸⁸ Ibid 17-18.
- ⁸⁹ See Christine Bakker, 'Climate Change and Children's Rights' in Jonathan Todres and Shani M King (eds), *The Oxford Handbook of Children's Rights Law* (Oxford University Press, 2020) [4.3]; Human Rights Council, Report of the United Nations High Commission for Human Rights: Access to justice for children, 25th sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013).
- ⁹⁰ Committee on the Rights of the Child, General Comment No 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), UN Doc CRC/GC/2003/5 (27 November 2003) 7[24] ('General Comment No 5').
- ⁹¹ Ibid.
- ⁹² Human Rights Council (n 89) 3-4[4].
- ⁹³ Ibid 4[5].
- ⁹⁴ Principles and Policy Guidance (n 18) 17-18.
- ⁹⁵ Committee on the Rights of the Child, General Comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child, UN Doc CRC/GC/2002/2 (15 November 2002) ('General Comment No 2').
- ⁹⁶ Ibid 2[7].
- ⁹⁷ Ibid 3[13].
- ⁹⁸ Ibid 4[13].
- ⁹⁹ Ibid 4[14].
- ¹⁰⁰ Principles and Policy Guidance (n 18) 17-18.
- ¹⁰¹ CRC (n 20) art 17
- ¹⁰² Ibid art 10.
- ¹⁰³ Ibid art 40(2)(iii).
- ¹⁰⁴ Ibid art 12.
- ¹⁰⁵ Ibid art 37(d).
- ¹⁰⁶ Human Rights Council, Report of the United Nations High Commissioner for Human Rights: Access to justice for children, UN Doc A/HRC/25/35 (16 December 2013) 4-5[8].
- ¹⁰⁷ General Comment No 2 (n 95).
- ¹⁰⁸ Committee on the Rights of the Child, General Comment No 16 (2013) on State obligations regarding the impact of the business sector on children's rights, UN Doc CRC/C/GC/16 (17 April 2013) 9[30] ('General Comment No 16').
- ¹⁰⁹ Ibid 10[30].
- ¹¹⁰ Ibid 17[61].
- ¹¹¹ Principles and Policy Guidance (n 18) 17-18.

- ¹¹² Nevena Vuckovic Sahovic, 'The Role of Civil Society in Implementing the General Measures of the Convention on the Rights of the Child' UNICEF (Report, June 2010) 4.
- ¹¹³ 'UNICEF civil society partnerships' UNICEF (Web Page) <<https://www.unicef.org/partnerships/civil-society>>.
- ¹¹⁴ Ibid 22.
- ¹¹⁵ Ibid.
- ¹¹⁶ Ibid.
- ¹¹⁷ Ibid 23.
- ¹¹⁸ Ibid.
- ¹¹⁹ See General Comment No 16 (n 108) 18[66]-[7]: These barriers include that: (a) cases involving business are often resolved through out-of-court settlements and in the absence of a developed body of case law; (b) in jurisdictions where case law has persuasive or precedential value, children and their families may be less likely to litigate against private enterprises due to uncertainties surrounding the outcome of such actions; (c) there are significant power, resource and information asymmetries between children and business, including the prohibitive costs involved in litigation against companies and difficulties securing legal representation for such actions; (d) obtaining remedies for abuses that occur in the context of a business' global operations can be particularly fraught, including where subsidiaries or other related companies lack insurance or have limited liability; and (e) the use of procedural hurdles in foreign jurisdictions to defeat extraterritorial claims.
- ¹²⁰ Committee on the Rights of the Child, General Comment No 12: The right of the child to be heard, UN Doc CRC/C/GC/12 (20 July 2009) 6[4].
- ¹²¹ Stephen Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative' (2003) 41 Carnegie Endowment for International Peace, 7-8.
- ¹²² Ibid 25.
- ¹²³ Ibid 25-6.
- ¹²⁴ The other three key pillars concern: (i) property rights; (ii) labour rights; and (iii) business rights: Commission on Legal Empowerment of the Poor, Making the Law Work for Everyone: Vol 1 (Report, 2008).
- ¹²⁵ Ibid 62-64.
- ¹²⁶ Legal empowerment of the poor and eradication of poverty: Report of the Secretary-General, GA Res 63/142, UN Doc A/64/133 (13 July 2009) 3[3].
- ¹²⁷ Ibid 3[4].
- ¹²⁸ 'What We Do' Namati (Web Page) <<https://namati.org/what-we-do/>>.
- ¹²⁹ Vivek Maru and Varun Gauri, Community Paralegals and the Pursuit of Justice (Cambridge University Press, 2018) 2.
- ¹³⁰ Ibid 2-3.
- ¹³¹ Namati and its partners train community paralegals in the United States, Kenya, Mozambique, Sierra Leone, Kenya, India, and Myanmar. For more information about community paralegal programs in each of these jurisdictions, see *ibid*.
- ¹³² Legal assistance provided through these community paralegal programs includes: (a) public education to increase awareness of the law; (b) advising clients on legal process, and options for pursuing remedies; (c) assisting clients to navigate authorities and institutions; (d) mediating disputes; (e) organising collective action; (f) advocacy; and (g) fact-finding, investigations, and monitoring. 'Community Paralegals' Namati (Web Page) <<https://namati.org/what-we-do/grassroots-legal-empowerment/paralegals/>>.
- ¹³³ 'What We Do' Namati (Web Page) <<https://namati.org/what-we-do/>>.
- ¹³⁴ 'Network' Namati (Web Page) <<https://namati.org/network/>>.
- ¹³⁵ See the glossary at page 4 for more detail.

- ¹³⁶ Ibid.
- ¹³⁷ For example, the Klity Creek litigation was commenced by local villagers in Thailand whose livelihoods and health were directly and adversely impacted by lead pollution into the main waterway. Through connecting with a small community of lawyers in Thailand, they founded an environmental working group and EnLAW Foundation to specifically investigate the prospects for environmental rights litigation in relation to this environmental harm. The Klity Creek cases spurred further strategic environmental litigation by EnLAW, to assist other communities in Thailand to use the law and legal proceedings to take action to address environmental harms affecting those communities. See page [59] of Schedule 1.
- ¹³⁸ Human Rights Council, Human rights and climate change, UN Doc A/HRC/RES/47/24 (26 July 2021, adopted on 14 July 2021) preamble para 19.
- ¹³⁹ Ibid preamble para 33.
- ¹⁴⁰ In this case, the Dutch court found that the government's commitments to reduce emissions by 17% below 1990 levels was insufficient to meet the Netherlands' fair contribution to the UN goal of preventing global temperature rise beyond 2 degrees Celsius above pre-industrial levels. The Court ordered that the Dutch state adopt a higher commitment and limit its emissions to 25% below 1990 levels by 2020: See Urgenda Foundation v State of the Netherlands [2015] HAZA C/09/00456689 (The Hague District Court); See also, 'Urgenda Foundation v State of the Netherlands' Climate Case Chart (Web Page) <<http://climatecasechart.com/climate-change-litigation/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>>.
- ¹⁴¹ Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment [2021] FCA 560; Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment (No 2) [2021] FCA 744; and on appeal, see Minister for the Environment v Sharma [2022] FCAFC 35.
- ¹⁴² As discussed at section [4.4] above and in more detail in Schedule 1.
- ¹⁴³ Oxford University Press, Max Planck Encyclopaedia of International Law, (online at April 2021) 'Intergenerational Equity' <<https://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law-9780199231690-e1421>>.
- ¹⁴⁴ Ibid.
- ¹⁴⁵ Development and International Cooperation: Environment, UN Doc A/42/427 (4 August 1987) annex ('Report of the World Commission on Environment and Development: Our Common Future').
- ¹⁴⁶ Paris Agreement (n 21) preamble.
- ¹⁴⁷ See Glasgow Climate Pact, UN Doc FCCC/PA/CMA/2021/L.16 (13 November 2021) ('Glasgow Climate Pact').
- ¹⁴⁸ Ibid 2.
- ¹⁴⁹ In the Oposa Case (n 56) the Supreme Court recognised intergenerational responsibility in relation to protecting the plaintiffs' constitutional right to a balanced and healthful ecology, affirming that the children were not only allowed to represent themselves, but also to act on behalf of "generations yet unborn" in the proceeding. See page [49] of Schedule 1 of this Report.
- ¹⁵⁰ See paragraph [7] above.
- ¹⁵¹ See paragraphs [65] – [69].
- ¹⁵² See United Nations Office on Drugs and Crime, Global Study on Legal Aid: Global Report (Report, December 2016) 3.
- ¹⁵³ Ibid 121.
- ¹⁵⁴ For example, for Cambodia and Thailand, see United Nations Office on Drugs and Crime, Global Study on Legal Aid: Country Profiles (Report, December 2016) 532; 558 <https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/GSLA_-_Country_Profiles.pdf>.
- ¹⁵⁵ For example, this is the case in Thailand: Ibid 558.
- ¹⁵⁶ Ibid 66 .
- ¹⁵⁷ Ibid 72-73.

- ¹⁵⁸ Dr Carolyn Graydon, Situation Analysis of Pacific Legal Aid Systems (Report, 26 March 2020) 6.
- ¹⁵⁹ Ibid 11.
- ¹⁶⁰ Ibid 5.
- ¹⁶¹ Daisy Mallett and Sati Nagra, Climate Change Litigation – What Is It and What to Expect? (27 February 2020) <<https://www.kwm.com/au/en/insights/latest-thinking/climate-change-litigation-what-is-it-and-what-to-expect.html>>.
- ¹⁶² See, eg, the Sharma v Minister for the Environment case (see page [45] of Schedule 1); and the Complaint to the Committee on the Rights of the Child (see page [38] of Schedule 1).
- ¹⁶³ See, eg, ‘Understanding Climate Change & Human Rights’ World’s Youth for Climate Justice (Web Page) <<https://www.wy4cj.org/climatehr>>.
- ¹⁶⁴ In comparison, only 35% of people in South Asia and 29% of people in Sub-Saharan Africa have access to the internet: Individuals using the Internet (%) of population) – East Asia & Pacific’ The World Bank (Web Page) <https://data.worldbank.org/indicator/IT.NET.USER.ZS?end=2020&locations=Z4&most_recent_value_desc=false&start=1990&view=chart>.
- ¹⁶⁵ ‘5G? Parts of Sarawak don’t have Internet at all’ The Star (Blog Post, 4 July 2019) <<https://www.thestar.com.my/news/nation/2019/07/04/5g-parts-of-sarawak-dont-have-internet-at-all>>.
- ¹⁶⁶ General Comment No 2 (n 95). See paragraphs [48] and [49] above for further detail.
- ¹⁶⁷ ‘Children’s Rights and National Human Rights Institutions and Ombudspersons’ CRIN (Web Page) <<https://archive.crin.org/en/guides/un-international-system/national-mechanisms/childrens-rights-and-national-human-rights.html>>.
- ¹⁶⁸ According to a global list of national human rights institutions specifically for children compiled by the Child Rights International Network, only three countries in the East Asia and Pacific region have established specialised children’s ombudsperson institutions: Indonesia, Mongolia, and the Philippines: ‘Global List of National Human Rights Institutions Specifically for Children’ CRIN (Web Page) (<<https://archive.crin.org/en/library/publications/global-list-national-human-rights-institutions-specifically-children.html>>).
- ¹⁶⁹ The ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children does not have a specific mandate to receive and investigate complaints of human rights violations: See Association of Southeast Asian Nations, Terms of Reference of the ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children (Report, 2010).
- ¹⁷⁰ See ‘Office of the Children’s Commissioner’ Suhakam (Web Page) <<https://suhakam.org.my/occ/>> (‘Suhakam’).
- ¹⁷¹ SUHAKAM is Malaysia’s independent national human rights agency established under the Human Rights Commission of Malaysia Act 1997 (Act 597): Ibid. The primary role of OCC Malaysia is to protect and promote the human rights of all children across Malaysia. OCC Malaysia has three core functions that mirror the organisational structure and work division of SUHAKAM, being: (i) advocacy and advice; (ii) education and awareness promotion; and (iii) complaints and monitoring: see Suhakam (n 170).
- ¹⁷² Human Rights Commission of Malaysia Act 1997 (Act 597) s 12.
- ¹⁷³ See UNICEF, Impact of Climate Change on Children: a Malaysian Perspective (Report, September 2021).
- ¹⁷⁴ See Suhakam (n 170).
- ¹⁷⁵ UNICEF and Vivid Economics, Investment Case for Child-Centred Climate Actions in the Context of COVID-19 in East Asia and the Pacific, (Working Paper, 2021) 10.
- ¹⁷⁶ For more information, see page [53] of Schedule 1 below.
- ¹⁷⁷ For more information, see page [64] of Schedule 1 below.
- ¹⁷⁸ See more at page [64] of Schedule 1 below.
- ¹⁷⁹ See more at page [74] of Schedule 1 below.
- ¹⁸⁰ ‘Educate’ Pacific Island Students Fighting Climate Change (Web Page) <<https://www.pisfcc.org/educate>>.

- ¹⁸¹ In the case of the Communication to the Committee on the Rights of the Child, the child complainants (including children and youth from Palau and the Marshall Islands) were represented by Hausfeld LLP, a global corporate law firm based in the United States, and Earthjustice, a non-profit public interest environmental law organisation also based in the United States. For more details, see page [38] of Schedule 1 below.
- ¹⁸² In the case of the Klity Creek litigation in Thailand, the villager-plaintiffs have received ongoing legal support and representation by a network of Thai environmental and social justice lawyers, EnLAW. For more details, see page [53] of Schedule 1 below.
- ¹⁸³ The Pacific Islands campaign for an International Court of Justice Advisory Opinion has been led by law students and recent graduates from the University of the South Pacific, who are supported in their campaign by other environmental NGOs, legal scholars and climate change experts from around the world. For more details, see page [60] of Schedule 1 below.
- ¹⁸⁴ 'About Us' Equity Generation Lawyers (Web Page) < <https://equitygenerationlawyers.com/about/>>.
- ¹⁸⁵ 'เกี่ยวกับ EnLAW มูลนิธิเพื่อสิ่งแวดล้อม' [About EnLaw Foundation for Environmental Justice] EnLaw Foundation (Web Page) <<https://enlawfoundation.org/%e0%b8%a3%e0%b8%b9%e0%b9%89%e0%b8%88%e0%b8%b1%e0%b8%81%e0%b9%80%e0%b8%a3%e0%b8%b2/%e0%b9%80%e0%b8%81%e0%b8%b5%e0%b9%88%e0%b8%a2%e0%b8%a7%e0%b8%81%e0%b8%b1%e0%b8%9a%e0%b9%80%e0%b8%a3%e0%b8%b2/>>.
- ¹⁸⁶ See, for example, Recommendation 4 in Part VI: Conclusion and recommendations .
- ¹⁸⁷ Emma Grey Ellis, 'Greta Thunberg's Online Attackers Reveal a Grim Pattern' Wired (online, 3 April 2020) <<https://www.wired.com/story/greta-thunberg-online-harassment/>>.
- ¹⁸⁸ See Faisal Asyraf 'Ili Nadiah just can't stay silent in the face of climate crisis' Malaysia Yahoo! News (Blog post, 24 January 2021) <https://malaysia.news.yahoo.com/ili-nadiah-just-t-stay-020600344.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlbmNvbS8&guce_referrer_sig=AQAAAEaLvE6EPQWA2BOf-Dlo4VpRndhGR6xmQc7ZHnCmtUBw73faeNyuUfgxBcbZM4sjrwstj7TDKqB0LBdPUVomN-MgDcPnmVog338pUtz0Xfv80ED-NnZCPwv_ZHb9DA_VS-IMXk0kWM9xjXAIvsmT4_4k8pqp2w8aP0lxPefS5xZY>.
- ¹⁸⁹ Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development, GA Res 40/11, UN Doc A/HRC/RES.40/11 (2 April 2019, adopted 21 March 2019) 4 [9].
- ¹⁹⁰ Global Witness, Deadly Environment (Report, 2014) 4.
- ¹⁹¹ Ibid 11.
- ¹⁹² Ibid 4, 22.
- ¹⁹³ Global Witness, Last Line of Defence, (Report, September 2021) 10.
- ¹⁹⁴ Ibid 11.
- ¹⁹⁵ Ibid.
- ¹⁹⁶ Ibid.
- ¹⁹⁷ Business & Human Rights Resource Centre, Defending Defenders: Challenging Malicious Lawsuits in Southeast Asia, (Annual Briefing, March 2020) 5.
- ¹⁹⁸ Ibid.
- ¹⁹⁹ Business & Human Rights Resource Centre (n 197) 5.
- ²⁰⁰ Ibid 12.
- ²⁰¹ Ibid 12.
- ²⁰² Ibid 12-13.
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- ²⁰⁶ Consistent with Article 12(1) of the CRC.
- ²⁰⁷ Consistent with Article 12(2) of the CRC.
- ²⁰⁸ Consistent with Article 2(1) of the CRC.
- ²⁰⁹ See Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 37th sess, UN Doc A/HRC/37/59 (24 January 2018) annex, principle 6.
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- ²¹¹ *Sacchi v Turkey* (n 83); *Sacchi v Germany* (n 83); *Sacchi v France* (n 83); *Sacchi v Brazil* (n 83); *Sacchi v Argentina* (n 83).
- ²¹² See, eg, *Sacchi v Germany* (n 83) 4 [3.1].
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- ²¹⁴ *Ibid* 5[3.7].
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- ²¹⁶ *Ibid* 5[3.5].
- ²¹⁷ *Ibid* 5[3.6].
- ²¹⁸ *Ibid* 6[3.8].
- ²¹⁹ *Ibid* 6[3.8].
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- ²²² See, eg, *Sacchi v Germany* (n 83) 3[2.3].
- ²²³ Earthjustice has an established track record of litigating environmental issues in the United States and internationally since the 1970s, when it was known as the Sierra Club Defense Fund and represented the plaintiffs in the seminal 1972 US Supreme Court case of *Sierra Club v Morton*, which helped establish the grounds for standing in environmental interest cases in the United States. Earthjustice also acted in the 2006 Supreme Court case of *Massachusetts v Environmental Protection Agency*, which is regarded as one of the earliest examples of climate litigation and which was the first US Supreme Court case to consider the issue of climate change.
- ²²⁴ See ‘*Sacchi et al v. Argentina, Brazil, France, Germany, and Turkey before the Committee on the Rights of the Child*’ Hausfeld (Blog Post) <<https://www.hausfeld.com/en-gb/what-we-do/current-claims/climate-change-and-children-s-rights/>>.
- ²²⁵ David R. Boyd, Amici Curia Brief of Special Rapporteur on Human Rights and the Environment in Support of Admissibility (Brief, 1 May 2020).
- ²²⁶ Optional Protocol to the International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 5(1), (‘Optional Protocol ICCPR’).
- ²²⁷ See, eg, *Sacchi v Germany* (n 83) 14[9.12], 15[9.7].
- ²²⁸ *Sacchi v Turkey* (n 83) [9.12], 12[9.14]; *Sacchi v Germany* (n 83) 14[9.12], 15[9.14]; *Sacchi v France* (n 83) 12[10.12], 13[10.14]; *Sacchi v Brazil* (n 83) 13[10.12], 14[10.14]; *Sacchi v Argentina* (n 83) 12[10.12], 13[10.14].
- ²²⁹ Optional Protocol (n 76) art 7(e).

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- ²³¹ See, eg, Sacchi v Argentina (n 83) 14[10.18].
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- ²³⁶ Ibid [24], [29].
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- ²⁴⁰ See 'Sharma v Minister for Environment', Equity Generation Lawyers (Blog Post) <<https://equitygenerationlawyers.com/cases/sharma-v-minister-for-environment/>>.
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- ²⁷⁶ Ibid rule 5, s 3.
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