Background Paper on: Environment and Children’s Rights in International Law and National Jurisprudence
This report was written by Patricia Moore at the request of the UNICEF East Asia and Pacific Regional Office (EAPRO) for use as an initial basic reference on the relationship between children’s rights and international environmental law, following the UNICEF EAPRO Third Regional Workshop on Justice for Children in East Asia and the Pacific, held 4-7 September 2018 in Bangkok, Thailand. It has been updated to reflect changes between January 2019 and May 2020. The information contained in this report has largely been sourced from a desktop review of publicly available documents. While all due care has been taken in compiling this report, the author and UNICEF accept no responsibility for the accuracy or completeness of information gained from these sources.

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# Table of Contents

Executive Summary.................................................................................................................. iv
1. Introduction ........................................................................................................................... 1
2. International environmental law .......................................................................................... 4
   2.1 Soft law ........................................................................................................................... 4
   2.2 Treaty law ........................................................................................................................ 7
      2.2.1 Air pollution ............................................................................................................ 9
      2.2.2 Water pollution ....................................................................................................... 9
      2.2.3 Climate change ........................................................................................................ 9
      2.2.4 Chemicals, toxic substances and waste ................................................................. 10
      2.2.5 Loss of biodiversity and access to nature ............................................................... 10
      2.2.6 Other obligations .................................................................................................... 11
      2.2.7 MEA programmes for youth .................................................................................. 11
      2.2.8 Making treaty law effective at the national level ..................................................... 12
3. National jurisprudence ......................................................................................................... 13
4. Recommendations ............................................................................................................... 16
References .................................................................................................................................. 19
<table>
<thead>
<tr>
<th>Acronyms</th>
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Executive Summary

i. This overview focuses on the Convention on the Rights of the Child (CRC), international environmental soft law, and 12 global and regional multilateral environmental agreements (MEAs) adopted since 1971. All of the countries in UNICEF’s East Asia and the Pacific Region (EAPR) are Parties to the CRC and five of the 10 global MEAs and at least 50% of the EAPR countries are Parties to four of the other global MEAs. All of the UNICEF EAPR countries that are members of the Association of South East Asian Nations (ASEAN) are Parties to the two regional agreements. Four of the global MEAs have their own programs for youth and three of the MEAs coordinate with UNICEF to implement those programs.

ii. In January 2018, the United Nations Special Rapporteur on Human Rights and the Environment issued two related reports – one on the relationship between children’s rights and environmental protection and the other on the relationship between human rights and the environment generally. The Special Rapporteur’s report on human rights and the environment proposes 16 fundamental principles drawn from multiple sources which generally reflect how existing human rights obligations are applied in the environmental context, acknowledging that not all countries have formally adopted all of them. The Special Rapporteur’s report on children’s rights and environmental protection incorporates all but two of the 16 fundamental principles listed in the Special Rapporteur’s report on human rights and the environment and adds two types of rights not included in the fundamental principles – the rights to an adequate standard of living and rights to play and recreation. This background paper discusses international environmental law in the context of the Special Rapporteur’s report on children’s rights and environmental protection, which grouped the types of environmental harm that affect children’s rights into five categories: air pollution; water pollution; climate change; chemicals; toxic substances and waste; and the loss of biodiversity and access to nature. This report uses those categories as the structure for briefly describing the MEAs that address those categories of environmental harm and the degree to which the MEAs address children.

iii. The CRC protects the rights of living children but not the rights of future generations. In contrast, few MEAs refer to living children as distinct from other age groups. Six MEAs acknowledge the need to protect and conserve the environment for future generations and five of them recognize that this must be done for present generations as well. The MEAs discussed in this report create obligations but none of them specify rights for individuals, as the CRC does. Most MEAs establish the obligation to protect human health and the environment generally but do not create obligations that specifically focus on children. Of the MEAs reviewed in this report, the Paris Agreement is the only one which acknowledges that human rights obligations should be taken into consideration, in the context of addressing climate change.

iv. This paper also provides summary descriptions of court cases in six countries – Philippines, Netherlands, Mexico, Colombia, United States, and India – in which children were either the sole plaintiffs or were included in a group of plaintiffs who sued government authorities alleging violations of rights related to the environment. These are selected cases and not an exhaustive list of environmental lawsuits by children. A fundamental question in most of these cases is whether or not children have the legal right, or ‘standing’, to bring a case to court. In all of the cases summarized in this paper, the national constitution and national law – or the lack of national regulation – were the
grounds for the lawsuits, although five of the cases cited principles of international law. These cases offer some insights for similar cases in other countries, but national constitutions and law will always determine the basis for lawsuits in each country.

v. The majority of the recommendations in the Special Rapporteur’s Report are for measures that individual countries should take at the national level. To implement those recommendations, the first step should be a comprehensive review of all applicable laws and regulations to determine which aspects of children’s rights and the environment the national regulatory framework already covers adequately and where there are gaps that need to be filled. For example, countries should ensure that national law defines children as a vulnerable group, reviewing their laws for definitions and/or lists of vulnerable groups and ensuring: (i) that the vulnerable groups are identical in all laws and regulations, if there are more than one; and (ii) that children are consistently included in all such definitions and lists.
1. Introduction

1. The genesis of this report was a presentation prepared for a session on environmental law and child rights during the United Nations Children’s Fund for East Asia and the Pacific Regional Office (UNICEF EAPRO) Third Regional Workshop on Justice for Children in East Asia and the Pacific, held 4-7 September 2018 in Bangkok, Thailand. The presentation provided a brief overview of the relationship between international law on children’s rights and international environmental law. This report was subsequently prepared at the request of UNICEF EAPRO for use as an initial basic reference on the relationship between children’s rights and international environmental law. It has been updated to reflect changes between January 2019 and May 2020.

2. International environmental law has been called the most rapidly evolving branch of international law. Its history can be traced back to 19th century treaties on freshwater, and treaties protecting various species of wild animals adopted in the first half of the 20th century. International environmental law has made significant advances since the 1970s, particularly since the Stockholm Conference on the Human Environment in 1972. In 2005, the United Nations Environment Programme (UNEP) compiled a list of 2723 treaties and other agreements related to the environment, the oldest of which was adopted in 1921. InforMEA, a UNEP service that tracks selected multilateral environmental agreements (MEAs), lists 34 global and 68 regional environmental treaties and protocols, adopted in the 20th and 21st centuries. This overview focuses on international environmental soft law and selected global and regional MEAs adopted since 1971. The first of those MEAs to refer to ‘future generations’, the World Heritage Convention, was adopted in 1972. Table 1 lists the countries in the UNICEF East and the Pacific Region (UNICEF EAPR) and shows the MEAs that are discussed in this paper and to which they are Parties.
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3. The Convention on the Rights of the Child (CRC) was adopted in 1989\textsuperscript{20}, the same year that the Commission on Human Rights first formally addressed environmental issues with a resolution on movement and dumping of toxic and dangerous products and wastes. The CRC mentions the environment in the context of the risks that pollution creates for children’s health and in the context of education.\textsuperscript{21} The Committee on the Rights of the Child, the expert body that monitors implementation of the CRC, convened a day of general discussion on children’s rights and the environment on 23 September 2016\textsuperscript{22} but has not issued a general comment on the issue\textsuperscript{23}.

4. The Commission on Human Rights adopted resolutions each year during the period 1994-1996 dealing with human rights and environment and in 2002, 2003\textsuperscript{24} and 2005\textsuperscript{25} adopted resolutions on human rights and the environment as part of sustainable development. The Human Rights Council, successor to the Commission on Human Rights, adopted resolutions on human rights and the environment each year during the period 2011-2015.\textsuperscript{26} The 2012 and 2014 resolutions acknowledged the CRC, and the 2013 resolution linked children’s health and environmental harm, but none of these five resolutions specifically addressed children’s rights and environment. In 2016, the Human Rights Council decided to incorporate the impact of climate change on children’s rights into its program of work\textsuperscript{27} and convened a panel discussion on the issue. A 2017 Human Rights Council resolution on human rights and the environment specifically called for States to facilitate the involvement of children in environmental decision-making\textsuperscript{28} but another resolution on human rights and climate change in 2018 mentions children only as part of a list of vulnerable groups\textsuperscript{29}.

5. In 2012, the Human Rights Council appointed an Independent Expert on Human Rights and Environment and in 2015 appointed him as the first Special Rapporteur on Human Rights and the Environment.\textsuperscript{30} Almost 20 years earlier, in 1994, a Special Rapporteur in the Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities had submitted a report which included Draft Principles on Human Rights and the Environment.\textsuperscript{31} The Draft Principles did not mention children and, in any case, were never formally adopted\textsuperscript{32}.

6. The Special Rapporteur on Human Rights and the Environment issued two related reports in January 2018 – one on the relationship between children’s rights and environmental protection [Special Rapporteur’s report on children’s rights and environmental protection]\textsuperscript{33} and the other on the relationship between human rights and the environment generally [Special Rapporteur’s report on human rights and the environment]\textsuperscript{34}. The Special Rapporteur’s report on human rights and the environment proposes 16 fundamental principles drawn from multiple sources (see section 2) which generally reflect how existing human rights obligations are applied in the environmental context, acknowledging that not all countries have formally adopted all of them.\textsuperscript{35} The Special Rapporteur’s report on children’s rights and environmental protection incorporates all but two of the 16 fundamental principles listed in the Special Rapporteur’s report on human rights and the environment and adds two types of rights not included in the fundamental principles – the rights to an adequate standard of living and rights to play and recreation.

7. Section 2 discusses international environmental law in the context of the Special Rapporteur’s report on children’s rights and environmental protection. The rights and obligations set out in the report are used as the basis for organizing the discussion.
2. International environmental law

8. International law is generally said to have two categories: “soft” law, which is not legally binding; and bilateral and multilateral treaties that establish binding obligations.

2.1 Soft law

9. Examples of international soft law in any field include resolutions of the United Nations General Assembly, declarations issued by international bodies and conferences, and internationally-adopted targets, goals, and codes of conduct. Proposals and recommendations made by groups of recognized experts may also be considered soft law. Principles and obligations that are eventually incorporated into treaty law often begin as soft law. There is international soft law on children’s rights and on the environment, among many other issues.

10. The Special Rapporteur’s report on children’s rights and environmental protection includes four international soft law principles among the obligations it identifies with respect to children’s rights and environmental protection: future generations/intergenerational equity; access to information; consultation/considering children’s views; and non-discrimination. The Special Rapporteur’s report also refers to the international environmental soft law principles of precaution and prevention. Table 2 lists principles of international environmental soft law. Table 3 provides an overview of international soft law instruments on children’s rights and on the environment as they relate to the rights and obligations set out in the Special Rapporteur’s report. The international environmental soft law documents included in Table 3 are ones adopted since 1972 that explicitly mention future generations and/or children.

Table 2. International Environmental Soft Law Principles

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<td>Sustainable development</td>
<td>Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.</td>
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<td>Intergenerational equity</td>
<td>The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.</td>
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<td>Precaution</td>
<td>Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.</td>
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<td>Prevention</td>
<td>States have...the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.</td>
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<td>Information and consultation</td>
<td>Appropriate access to information concerning the environment...and the opportunity to participate in decision-making processes.</td>
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<td>Environmental impact assessment</td>
<td>Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.</td>
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## Table 3. Overview: Children’s Rights and Environmental Protection in International Soft Law

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<td>Programmes 2, 9</td>
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<td>Para. 7(4), Plan of Action paras. 21, 26, 28, 36, 37, 45-47</td>
<td>Articles 24, 29</td>
<td>SDG 3 – health SDG 11 – cities/ natural environment</td>
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<td>Programme 10</td>
<td>Principle 5</td>
<td>Implementation Plan, paras. 40, 102</td>
<td>Plan of Action paras. 18, 44(5)</td>
<td>Article 21*</td>
<td>SDG 1 – poverty SDG 2- hunger</td>
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<td>Para. 7(5), Plan of Action paras.14, 19, 21, 22, 38-40</td>
<td>Article 14*</td>
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<td>Principle 21(a)</td>
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<td>(about children’s rights)</td>
<td>Principle 10</td>
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<td>SDG 16 – peace/ access to information</td>
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<td>Principle 11(c)</td>
<td>Principle 17</td>
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<td>Principles 16, 23</td>
<td>Principles 10, 21</td>
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<td>Para. 7(9), Plan of Action para. 32(1)</td>
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<td>Plan of Action para. 44(7)</td>
<td>Articles 28, 32, 40</td>
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<td>Para. 29</td>
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<td>Articles 2, 22*</td>
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<td>Future generations</td>
<td>Principle 2</td>
<td>Preamble</td>
<td>Programme 25</td>
<td>Principle 3</td>
<td>Paras. 3-6</td>
<td>Para. 7(10)</td>
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* Explicitly refers to children and/or future generations
11. *Our Common Future*, the 1987 report of the World Commission on Environment and Development, is not considered soft law but it defined sustainable development and provided direction for the subsequent evolution of international environmental law. The Special Rapporteur’s report on children’s rights and environmental protection updates the descriptions of many of the impacts of environmental degradation on children that *Our Common Future* described more than 30 years ago. *Our Common Future* defined sustainable development as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.” This idea of fairness or justice between generations was developed as the legal concept of intergenerational equity, which has been integrated into international environmental soft law and treaty law. References to ‘future generations’ are more common in international environmental law than references to children.

12. Two soft law instruments on children’s rights which include references to the environment are the 1990 World Declaration on the Survival, Protection and Development of Children and the 2002 UN General Assembly Declaration “A World Fit for Children”, which was reaffirmed in 2007. The 1990 World Declaration included a 10-point program, one element of which is a commitment to work for common measures to protect the environment so that children can enjoy a safer and healthier future. One objective of “A World Fit for Children” is to protect the Earth for children and to protect children and minimize the impact of environmental degradation on them.

13. Three international environmental soft law documents mention children – the 2002 Johannesburg Declaration and its Plan of Implementation; the 2007 Declaration on the Rights of Indigenous Peoples (UNDRIP); and the Sustainable Development Goals (SDGs) – but do not link children’s rights and environment. The targets of seven of the 17 SDGs mention children but not children’s rights as such. The SDGs for climate and the aquatic and terrestrial environments do not mention children but meeting those targets will help to maintain a healthy natural environment for children. UNDRIP declares that indigenous peoples have the right to conservation and protection of the environment and calls for paying attention to the rights and special needs of children. The preamble and implementation plan of the Johannesburg Declaration mention children in the context of human rights generally but not in the specific context of children’s rights. Interestingly, the Plan of Implementation acknowledges “...the consideration being given to the possible relationship between environment and human rights...” [emphasis added], indicating that as recently as 2002, there was still official reluctance at the international level to recognize the relationship between human rights and the environment, which the Special Rapporteur did in 2018.

14. Two examples of regional soft law in the UNICEF EAPR are the ASEAN Human Rights Declaration and *Our Common Humanity – Asian Human Rights Charter*. The 2012 ASEAN Human Rights Declaration states that children’s rights are an inalienable part of human rights and that childhood is entitled to special care and assistance. The 1998 Asian Human Rights Charter has a section on children and includes environmental degradation as one of many oppressions that children face.

15. A resolution of the 2012 World Conservation Congress of the International Union for Conservation of Nature (IUCN) endorsed the child’s inherent right to connect with nature in a meaningful way, to live in an environment that is not harmful to his or her health or well-being, to the assurance of the conservation of nature and the protection
of the environment for the benefit of present and future generations, and to be equipped for the responsibility to help address the environmental challenges he or she will unfortunately be confronted with. It called on IUCN governmental and nongovernmental members to promote an additional protocol to the CRC on the child’s right to nature and a healthy environment.\textsuperscript{53}

2.2 Treaty law

16. The CRC protects the rights of living children but not the rights of future generations.\textsuperscript{54} In contrast, few MEAs refer to living children as distinct from other age groups. Six MEAs acknowledge the need to protect and conserve the environment for future generations and five of them recognize that this must be done for present generations as well. The MEAs discussed in this report create obligations but none of them specify rights for individuals, as the CRC does. Most MEAs establish the obligation to protect human health and the environment generally but do not create obligations that specifically focus on children. Of the MEAs reviewed in this report, the Paris Agreement is the only one which acknowledges that human rights obligations should be taken into consideration, in the context of addressing climate change.

17. The Special Rapporteur’s report on children’s rights and environmental protection grouped the types of environmental harm that affect children’s rights into five categories: air pollution; water pollution; climate change; chemicals; toxic substances and waste; and the loss of biodiversity and access to nature. This report uses those categories as the structure for briefly describing the MEAs that address those categories of environmental harm and the degree to which the MEAs address children. Table 4 provides an overview of provisions of MEAs that govern the issues of children’s rights set out in the CRC and the five categories of issues that are the focus of the Special Rapporteur’s report.
### Table 4. Overview: Children’s Rights and Environmental Protection in International Treaty Law

In this table: gray shading indicates that an MEA governs an issue; ✓ indicates that the MEA explicitly mentions children; ■ indicates that the MEA has a provision on the issue but does not explicitly mention children.

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2.2.1 Air pollution

18. The Special Rapporteur’s report identifies ambient air pollution from factories, vehicles, and the household use of wood, coal, and other solid fuels for cooking and heating as the sources of air pollution that most affect children. There are no international agreements on these types of pollution; they are regulated by national law. There are MEAs that govern other types of air pollution.

19. According to the World Health Organization (WHO), children are disproportionately affected by skin cancers and other health risks caused by over-exposure to ultraviolet (UV) radiation. The Earth’s ozone layer absorbs most UV radiation and protects children and others from over-exposure. In the 1970s and 1980s, it was discovered that substances that human activities emitted into the atmosphere were depleting the ozone layer and increasing the likelihood of over-exposure to UV radiation. The Vienna Convention and its Montreal Protocol were adopted to control the emissions of substances that deplete the ozone layer. Neither of these MEAs mentions children but the general obligation under the Vienna Convention is to protect human health and the environment.

20. Smoke haze caused primarily by land and forest fires is a seasonal source of air pollution in parts of South East Asia. The Association of South East Asian Nations (ASEAN) adopted a regional agreement to control transboundary haze pollution. The agreement does not mention children but its general objective is to protect human health and the environment.

2.2.2 Water pollution

21. Water pollution, similar to air pollution, is primarily controlled by national law and regulations. Two international agreements to which UNICEF EAPR countries are Parties have provisions for controlling pollution in rivers that cross national borders. A treaty on international watercourses (UNWC) requires States to prevent, reduce and control water pollution that may cause harm to the environment and human health and safety. Viet Nam is the only UNICEF EAPR country that is a Party to the UNWC. The Mekong River Agreement, adopted by four of the countries that share the Mekong River, requires protecting the environment from pollution but does not include protecting human health and does not refer to future generations. The UNWC mentions present as well as future generations in its preamble but neither the UNWC nor the Mekong River Agreement refers to children.

2.2.3 Climate change

22. Climate change will disproportionately affect children, especially children living in poverty-stricken areas. The Executive Director of UNICEF has stated that “there may be no greater, growing threat facing the world’s children – and their children – than climate change”. The Climate Change Convention (UNFCCC) and its supplementary Paris Agreement aim to combat climate change by reducing emissions of greenhouse gases. The UNFCCC requires States to take measures to reduce the risks that climate change causes to the environment and human health and calls for protecting the climate system for the benefit of present generations, as well as future ones, but does not specifically mention children. The Paris Agreement mentions children and acknowledges the general human rights to health and intergenerational equity in its Preamble.
2.2.4 Chemicals, toxic substances and waste

23. The Special Rapporteur’s report describes the increase of hazardous chemicals and toxic substances in the environment and the fact that children are exposed to these substances even before birth. Two MEAs deal with chemicals. The Rotterdam Convention (PIC) governs hazardous chemicals and pesticides in international trade and the Stockholm Convention (POPs) deals with persistent organic pollutants. POPs focuses on protecting human health and the environment from persistent organic pollutants and calls for its Parties to consult groups involved in children’s health when they develop plans to implement the Convention. The objective of PIC is to protect human health and the environment, but this MEA does not mention children or even future generations.

24. The most recent MEA governs mercury, a highly toxic substance, which particularly affects the nervous system and has a range of other harmful effects. Approximately 1 million children participate in artisanal and small-scale mining which commonly employs mercury. The objective of the Minamata Convention is to protect human health and the environment from exposure to mercury. The preamble acknowledges the health concerns, especially for women, children, and, through them, future generations. The Convention requires national action plans on artisanal mining that include strategies to prevent the exposure of children to mercury.

25. The global agreement on toxic waste is the Basel Convention, which governs transboundary movements of hazardous waste. National law regulates how hazardous waste is managed within individual countries. The Basel Convention focuses on minimizing the impact of hazardous wastes on human health and the environment but does not refer to children or future generations.

2.2.5 Loss of biodiversity and access to nature

26. The Special Rapporteur’s Report notes that decreasing biodiversity and the loss of access to the natural environment affect many children around the world, particularly indigenous children and children in traditional communities who rely on healthy ecosystems for subsistence. Many urban children have little or no exposure to the natural environment, even though such exposure has beneficial effects on mental health beyond basic subsistence. Several MEAs govern different aspects of human interaction with the natural environment, with the objective of conserving it.

27. The Convention on Biological Diversity (CBD) focuses on conservation and sustainable use of ecosystems, species, and genetic resources. The CBD does not mention children explicitly but its preamble calls for conserving and sustainably using biological resources for present generations as well as future ones. The CBD has two Protocols, or supplementary agreements. The Cartagena Protocol on Biosafety governs living modified organisms and requires taking risks to the environment and human health into account in implementing it. The Nagoya Protocol governs access to genetic resources and benefit sharing and does not address impacts on human health or the environment. Neither of these protocols mentions children or present or future generations. The objective of the Desertification Convention (UNCCD) is to combat desertification through long-term strategies for managing land and water. Similar to the CBD, the UNCCD does not mention children but in its preamble calls for combating desertification and mitigating the effects of drought for the benefit of present as well as future generations.
28. Four other MEAs, all adopted prior to the CBD, govern specific aspects of protecting
the natural environment that the CBD covers generally. None of these MEAs refer to
children or to protecting human health; their objectives are to protect the natural world
from human activities. The World Heritage Convention (WHC)\(^{119}\), the Convention on
International Trade in Endangered Species (CITES)\(^{120}\), and the Convention on
Migratory Species (CMS)\(^{121}\) all acknowledge the need to conserve ecosystems and
species for future generations; the Convention on Wetlands (Ramsar)\(^{122}\) does not. The
Plant Treaty (ITPGRFA)\(^{123}\), which governs plant genetic resources, does not mention
children, human health or the environment. Its preamble acknowledges the
responsibility to conserve plant genetic resources for past and future generations but
not present ones. Nevertheless, the Plant Treaty is important for children because its
objective is to conserve food resources – in the form of 64 plants which are the basic
crops that together account for 80 percent of all human consumption.

2.2.6 Other obligations

29. The Special Rapporteur’s Report describes seven human rights obligations that are
related to protecting children from environmental harm. Four of those obligations are
reflected in at least one MEA: environmental education; information; assessment; and
regulating private actors.

30. **Environmental education.** The CRC stipulates that the education of the child must be
directed to developing respect for the natural environment, among other things.\(^{124}\) Six
MEAs – CBD, UNFCCC, Paris Agreement, UNCCD, POPs, and Minamata – create
the obligation to develop educational materials and/or programmes related to the
subject of the treaty. POPs specifically says that the materials and educational
programmes should be targeted at children.

31. **Information.** The CRC specifies that children have the right to seek, receive and impart
information and ideas of all kinds in any media of the child’s choice.\(^{125}\) Four MEAs –
UNFCCC, Paris Agreement, UNCCD, and Minamata – generally require providing the
public with information on issues related to the subject of the treaty. None of these
MEAs requires providing information in ways that are accessible to children or easy for
children to understand.

32. **Assessment.** The CRC does not include a right or obligation related to assessment.
Four MEAs – CBD, UNFCCC, Paris Agreement, and Minamata – establish the
obligation to carry out environmental impact assessment. There is a global agreement
on environmental assessment in a transboundary context (Espoo)\(^{126}\); no UNICEF
EAPR countries are Parties to that treaty.

33. **Regulating private actors.** The CRC does not include a right or obligation related to
regulating private actors. The ITPGRFA is the only MEA that specifically requires this.

34. **MEAs have no provisions for three of the obligations listed in the Special Rapporteur’s
Report: considering the views of children; providing remedies; and non-discrimination.
The CRC also has no obligation to provide remedies.**

2.2.7 MEA programmes for youth

35. The CBD, UNFCCC, and UNCCD, along with UNICEF and 12 other UN agencies,
participate in the United Nations Joint Framework Initiative on Children, Youth and
Climate Change, which was created in 2008. The purpose of the Joint Initiative is to
empower youth to take adaptation and mitigation actions and enhance effective participation of youth in climate change policy decision-making processes. Participating MEAs and UN agencies carry out activities together and in collaboration with other international bodies such as the World Association of Girl Guides and Girl Scouts.

36. Several MEAs have their own programs for youth. The CRC defines children as below the age of 18. For statistical purposes, the United Nations defines ‘youth’ to be between the ages of 15 and 24, so there is a three-year period from the ages of 15 up to 18 when children are also considered youth and eligible to participate in these programmes.

37. The WHC has been organizing the World Heritage Youth Forum since 1995. The Forums are now also organized and held in conjunction with annual sessions of the World Heritage Committee. In June 2018, Madison Pearl Edwards, a 12-year-old girl from Belize, addressed the World Heritage Committee and said: “I respectfully encourage the representatives of each country present to think of my generation in decision-making regarding World Heritage sites...”.

38. The CBD Secretariat created the Global Youth Biodiversity Network (GYBN) to be the official voice for youth in negotiations under the CBD. The GYBN is organized regionally and some countries have national chapters as well. GYBN Asia has a sub-regional group for South East Asia. A regional group for Oceania has been created and is establishing chapters.

39. The UNFCCC Secretariat recognized YOUNGO (YOUTH NGOs) as one of nine civil society constituencies that have a formal voice in UNFCCC processes. Every year YOUNGO together with local youth organizations organizes the Conference of Youth on the weekend before the annual year-end UN Climate Change Conference and YOUNGO participates in other UNFCCC processes throughout the year.

40. In 2017, the UNCCD convened the first UNCCD Youth Forum during the Conference of the Parties, which is the meeting of all countries that participate in an MEA. The forum adopted the declaration “Global Youth Initiative for Combatting Desertification” which the Parties to the UNCCD accepted as part of the decisions of the Conference of the Parties. During 2019, youth organizations worked toward formalizing institutional youth engagement with the UNCCD, to be called the "Global Youth Caucus on Desertification and Land", the UNCCD’s Major Group for Children and Youth.

2.2.8 Making treaty law effective at the national level

41. Each country’s constitution specifies the way in which a treaty becomes effective in the country after the parliament has ratified it. In some cases, the constitution stipulates that a treaty is directly effective as national law as soon as it is ratified. In other countries, the constitution requires that the obligations in a treaty must be implemented in national law before they become effective in the country. Most countries designate a national government authority to serve as focal point for each treaty, according to the subject matter of the treaty. The designated government authority often, but not always, is responsible for ensuring that the treaty obligations are implemented in national law and regulations.
This section provides summary descriptions of cases in six countries – Philippines, Netherlands, Mexico, Colombia, United States, and India – in which children were either the sole plaintiffs or were included in a group of plaintiffs who sued government authorities alleging violations of rights related to the environment. These are selected cases and not an exhaustive list of environmental lawsuits by children. The cases discussed in this section are cases for which documentation is available online. The cases are discussed in chronological order, from the oldest to the most recent, and include two cases which were ongoing as of May 2020.

A fundamental question in most of these cases is whether or not children have the legal right, or ‘standing’ to bring a case to court. In the case decided in Mexico, the plaintiff children’s standing to sue was an issue and the national Supreme Court upheld their standing. The Colombian Supreme Court found that some, but not all, of the plaintiff children had standing. In the case in the Philippines, standing was not an issue but the Supreme Court addressed it anyway and said that the plaintiff children had standing. In the case in the Netherlands, the court upheld the overall claim that was brought by a foundation on its own behalf and on behalf of individuals who reportedly included children, but said that the foundation’s interests were sufficient and rejected the claim made on behalf of the individuals.

Philippines, Oposa vs. Factoran, decided 30 July 1993

Forty-five children, with their parents, and the Philippine Ecological Network were the plaintiffs. The case was a class action suit asking the government to cancel all existing timber licenses and not to issue new ones because excessive logging infringed their constitutional right to a balanced ecology. The trial court dismissed the suit for three reasons, which did not include whether the children had standing to sue. The plaintiffs petitioned the Supreme Court. Even though standing to sue was not an issue in the petition, the Supreme Court addressed it and decided that: (i) the children had standing to sue on behalf of themselves and future generations; (ii) the children had a cause of action because the Constitution and national law guarantee the right to a balanced and healthful ecology; and (iii) the lower court would have to hold a trial on the issues of whether to cancel timber licenses and cease issuing new ones.

In sending the case back to the trial court, the Supreme Court directed that all timber license holders should be made defendants in addition to the government authorities, which would have been a significant expansion of the case. The plaintiffs did not have sufficient financing for the expanded case and did not pursue it. The government subsequently reduced the number of timber licenses, but has continued to issue them.

Oposa vs. Factoran is internationally known because of the Supreme Court’s statement that the children could sue on behalf of future generations. The case is nationally significant for the Philippines because the Supreme Court decided that the constitutional right to a healthy environment is an actionable right, which means that, in the future, other children could sue to defend this right.

Netherlands, Urgenda Foundation v. The State of the Netherlands (Ministry of Infrastructure and the Environment), decided 20 December 2019

In 2012, the Urgenda Foundation set a letter to the Prime Minister of the Netherlands requesting that the State commit to reducing CO₂ emissions in the Netherlands by 40% by 2020, as compared to the emissions in 1990. The Dutch government responded to
Urgenda, saying it would work with the European Union to come up with a plan, but did not promise the 40% reduction.

48. In 2013, the Urgenda Foundation, as plaintiff, sued on its own behalf and also represented 886 individuals, some of whom were reportedly children. The basis for the lawsuit was that because it was not taking more aggressive action to control emissions, the Dutch government was acting contrary to its duty of care to its citizens. The trial court cited the precautionary principle in the UNFCCC and ordered the government to reduce greenhouse gas emissions by at least 25% by the end of 2020, as compared to the level in 1990. This was the first decision by a court ordering a government to limit emissions for reasons other than a statutory requirement. The trial court, however, rejected Urgenda’s claim on behalf of the 886 individual plaintiffs, saying that Urgenda could bring the suit on its own. The Dutch government agreed to work toward a 25% reduction, but appealed the case. On 9 October 2018, the Hague Court of Appeal decided in favor of Urgenda. On 20 December 2019, the Supreme Court of the Netherlands upheld the decision of the Hague Court of Appeal.

3.3 Mexico, Malecón Tajamar case, latest decision 30 January 2020

49. In 2015, 113 children in Cancún, Quintana Roo state, sued seven federal, state, and municipal authorities on the basis that the approval of an EIA which allowed destroying mangroves to develop tourist facilities violated their constitutional and statutory rights. The lower court dismissed the suit on the grounds that the children did not have standing to sue. The children appealed and on 19 March 2018, the Supreme Court reversed the decision of the lower court. The Supreme Court stated that it is relatively easy to compile the documentation required to prove that the children who filed the suit live in the affected area and therefore have standing to sue. The Supreme Court sent the case back to the lower court for a decision on the merits of the case. In its decision, the Supreme Court stated that the “superior interest of the child” is an orienting principle for interpreting any legal norm, which must be applied in cases in which the interests of a child may be affected. A lower court then invalidated the EIA, prohibited new construction permits, and ordered the restoration of the mangroves of Malecón Tajamar.

50. In May 2018, a child plaintiff, represented by his father, sued to require federal and municipal authorities to re-open Malecón Tajamar to the public and maintain the streets and other infrastructure that had already been constructed. The first court rejected the petition but a second court accepted it and, in February 2019, the court ordered the municipality to re-open Malecón Tajamar to vehicle traffic. An NGO, the Movement for People’s Rights, sued to overturn the decision to re-open on the grounds that it threatened the “civil achievement” of stopping construction and restoring the mangroves. In January 2020, a court found that the NGO plaintiff did not have standing and allowed the decision to re-open Malecón Tajamar to vehicle traffic to stand. In February 2020, it was reported that the area would be re-leveled and the mangroves restored, but information on a court decision issued after the 30 January decision was not available online.

3.4 Colombia, Amazon Deforestation case, decided 5 April 2018

51. Twenty-five children, adolescents, and young adults, ranging in age from seven to 25, sued the Presidency, two ministries, the national protected area authority, and the governors of six states, claiming that their constitutional rights to a healthy environment, and the rights of future generations, were being violated because the
government was permitting deforestation to continue in the Colombian Amazon. They requested, among other things, that central government authorities prepare, within six months, an action plan to reduce deforestation in the Colombian Amazon to zero by 2020. The trial court dismissed their case and they appealed to the Supreme Court.

52. The Supreme Court decided that 12 of the children had standing to sue because they were suing on their own behalf and not on behalf of others. The Court ordered national authorities to produce an action plan within six months, as the plaintiffs requested, and ordered the other defendants to take related actions within five months. Significantly, the Supreme Court went beyond the plaintiffs’ requests and decided that the Colombian Amazon is a legal person with rights that can be defended in court.

3.5 **United States, Juliana v. United States**, ongoing as of May 2020\textsuperscript{141}

53. In 2015, 21 children, the youth NGO Earth Guardians, and ‘future generations’ represented by Dr. James Hansen as their guardian\textsuperscript{142}, sued the US federal government in a federal district court in the state of Oregon. President Barack Obama and members of his Cabinet were the original defendants; since the 2016 election, the case is now sometimes referred to as “Youth v. Trump”. The complaint alleges that government actions that cause climate change – principally support for the fossil fuel industry and lack of regulation of CO\textsubscript{2} emissions – violate children’s constitutional rights to life, liberty and property and fail to protect public trust resources. The fossil fuel industry initially joined with the federal government in seeking to have the case dismissed.

54. After five failed attempts to dismiss the case, the trial was scheduled to begin on 29 October 2018. The government continued to request the court to delay the case and on 11 November 2018 the trial court placed the case on hold pending a decision by the U.S. Court of Appeals for the Ninth Circuit. On 17 January 2020, the Ninth Circuit Court of Appeals decided that the child plaintiffs did not have standing and that their complaint raised issues that could not be decided by a court and “...must be made to the political branches or to the electorate at large.” On 3 February 2020, the plaintiffs filed a petition for a re-hearing and on 24 March the government filed an opposition to the rehearing.\textsuperscript{143}

3.6 **India, Pandey versus Union of India and Central Pollution Control Board**, pending appeal as of March 2020\textsuperscript{144}

55. In 2017, nine-year-old Ridhima Pandey, represented by her father, filed suit in India’s National Green Tribunal claiming that she is directly affected by the government’s failure to regulate and reduce greenhouse gas emissions, which violated its duty to protect public trust resources, and that the consequences would also affect future generations. Her petition requests the government to take eight specified actions, and any other action the court might order, to mitigate the effects of government activities that contribute to greenhouse gas emissions. On 15 January 2019, the Green Tribunal dismissed the case and the plaintiff appealed to the Supreme Court of India.

3.7 **Implications of these cases for national jurisprudence in other countries**

56. In all of the cases summarized in this section, the national constitution and national law – or the lack of national regulation – were the grounds for the lawsuits. In India, Netherlands, and the US, the lawsuits claimed that the government had failed to regulate and/or that the government had failed to enforce existing law. The cases in
India and the US invoked the public trust doctrine, which is a principle of common law and civil law rather than national legislation.

57. Five of the cases cited principles of international law. Plaintiffs in the cases in Colombia, India, Philippines, and the US used the principle of intergenerational equity, suing on their own behalf and on behalf of future generations. The case in the Netherlands cited the precautionary principle as stated in the UNFCCC.

58. It should be noted that child plaintiffs can have competing interests. In the Malecón Tajamar case in Mexico, a group of child plaintiffs successfully sued to stop construction that had destroyed mangroves and to have the mangroves restored. Soon after, another child plaintiff sued in a different court to re-open the area to vehicle access and that court ordered the area re-opened.

59. The results of some of these cases were unintended. The courts in two countries used the cases to innovate, going beyond what the plaintiffs asked for. In Colombia, in addition to granting what plaintiffs requested, the Supreme Court granted legal personality to the Colombian Amazon, which means the Amazon now has rights of its own in Colombia. The plaintiffs in the case in the Philippines were unable to pursue their case for financial reasons, so they did not achieve what they originally sought. But the Supreme Court used their case to affirm a constitutional right to a healthy environment and the principle of intergenerational equity.

60. These cases offer some insights for similar cases in other countries, but national constitutions and law will always determine the basis for lawsuits in each country. A 2016 study, *Cleaning up the Mess – Children’s Rights and Environmental Protection*, recommended promoting strategic litigation for the joint protection of children’s rights and the environment. Lawyers who bring such cases, particularly with children as plaintiffs, must determine the appropriate legal basis for them in the context of their own country’s legal system.

4. **Recommendations**

61. The Special Rapporteur’s Report contains many recommendations for measures to protect children’s rights with respect to the environment. Two of them are recommendations to international bodies:

- The Committee on the Rights of the Child is encouraged to consider adopting a general comment on children’s rights and the environment;
- International financial mechanisms should include protection for children’s rights in environmental and social safeguards.

62. In light of the Special Rapporteur’s recommendations to international bodies, UNICEF/EAPRO may consider:

- Using the Memorandum of Understanding with the Asian Development Bank (ADB) to encourage ADB to ensure that its safeguards policy and practices include protection for children’s rights; and
- Working with the CBD Secretariat to support the Oceania regional group of the GYBN (see paragraph 37), in addition to strengthening and expanding at the regional level UNICEF’s current collaboration with other MEA secretariats which already have programmes for youth and exploring the potential for initiating such programmes in Asia and the Pacific with MEA secretariats that do not already have them.
63. The majority of the recommendations in the Special Rapporteur’s Report are for measures that individual countries are advised to take at the national level:

- If a country has not done so, ratify the CRC and also become a Party to its Optional Protocol;
- Ensure environmental education;
- Ensure that the effects of proposed measures on children’s rights are assessed before the measures are taken or approved;
- Compile information on environmental harm to children and make it publicly available;
- Facilitate children’s participation in environmental decision-making;
- Remove barriers to access to justice and ensure that victims of environmental harm have access to remedies from those responsible for activities that cause the harm;
- Ensure that children’s best interests are a primary consideration with respect to all decision-making that may cause them environmental harm;
- Protect children from environmental harm, including by adopting and implementing best available environmental standards and by complying with MEA requirements to share information on toxic chemicals and waste;
- Require environmental impact assessment, social impact assessment, and human rights impact assessment and ensure that those processes include assessment of impacts on children’s rights, particularly children most at risk;
- Use the precautionary approach and never take regressive measures;
- Regulate businesses effectively, require them to comply with international guiding principles on business and children’s rights, and ensure that they comply with all national environmental laws; and
- Implement recommendations from expert agencies, including UNICEF and WHO.¹⁴⁸

64. The 2016 study, Cleaning up the Mess, proposed that children’s rights should be mainstreamed in all fields of national environmental policy, energy policy and law, and national measures for climate change adaptation and mitigation. Several of the study’s proposed action points – on children’s access to information, participation in decision-making and access to justice – were included in recommendations in the Special Rapporteur’s Report. Cleaning up the Mess also proposed the following actions:

- Developing child-responsive measures for accessing environmental resources and services;
- Developing a methodology and establishing the legal basis for child rights impact assessment; and
- Better collecting of data and indicators on children in the context of sustainable development.

65. In addition to the recommendations for national law in paragraphs 62 and 63, countries are advised to ensure that national law defines children as a vulnerable group. Countries may have one or more laws which stipulate that vulnerable groups are entitled to extra protection. Such laws usually, but not always, include children in a statutory definition or list of the members of vulnerable groups. Countries are encouraged to review their laws for definitions and/or lists of vulnerable groups and ensure: (i) that the vulnerable groups are identical in all laws and regulations, if there are more than one; and (ii) that children are consistently included in all such definitions and lists.
66. In the event that UNICEF EAPRO considers supporting individual countries in its region with any of the recommendations in paragraphs 60-64, the first step would be recommended to be a comprehensive review of all applicable laws and regulations to determine which aspects of children's rights and the environment the national regulatory framework already covers adequately and where there are gaps that need to be filled.
References
Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment...on the relationship between children’s rights and environmental protection.

Children’s Rights and the Environment (child-friendly version of the Special Rapporteur’s report)


Weiss, E.B. 2011. The Evolution of International Environmental Law. Georgetown University Law Center Scholarship @ GEORGETOWN LAW.

INTERNATIONAL SOFT LAW

Human rights/Children’s rights

- World Declaration on the Survival, Protection and Development of Children
  Accessed 1 June 2020.

  Accessed 1 June 2020.

- United Nations Declaration on the Rights of Indigenous Peoples


- Our Common Humanity – Asian human Rights Charter.
- Stockholm Declaration

  Accessed 1 June 2020.

- Rio Declaration

- Johannesburg Declaration

- Sustainable Development Goals  https://sustainabledevelopment.un.org/sdgs
  Accessed 1 June 2020.

**INTERNATIONAL TREATY LAW**

*Children’s rights*

- Convention on the Rights of the Child

*Multilateral environmental agreements*

In each category, MEAs are listed in chronological order by the date of their adoption

**Air pollution**

- Vienna Convention for the Protection of the Ozone Layer

- Montreal Protocol on Substances that Deplete the Ozone Layer

- ASEAN Agreement on Transboundary Haze Pollution
  https://asean.org/?static_post=asean-agreement-transboundary-haze-pollution
  Accessed 1 June 2020.

**Water pollution**

- Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin

- Convention on the Law of the Non-navigational Uses of International Watercourses

**Climate change**

- United Nations Framework Convention on Climate Change

- Paris Agreement
  https://unfccc.int/sites/default/files/english_paris_agreement.pdf
  Accessed 1 June 2020.

**Chemicals, toxic substances and waste**
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal  

- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade  

- Stockholm Convention on Persistent Organic Pollutants  

- Minamata Convention on Mercury  

**Loss of biodiversity and access to nature**

- Convention on Wetlands of International Importance especially as Waterfowl Habitat  

- Convention Concerning the Protection of the World Cultural and Natural Heritage  

- Convention on International Trade in Endangered Species of Wild Fauna and Flora  

- Convention on the Conservation of Migratory Species of Wild Animals  

- Convention on Biological Diversity  

- Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa  

- Cartagena Protocol on Biosafety to the Convention on Biological Diversity  

- International Treaty on Plant Genetic Resources for Food and Agriculture  

- Nagoya Protocol on Access To Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity  

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environment, the Special Rapporteur made two country visits, one of them to Mongolia, a UNICEF EAPR country, in September 2017.


38 Rio Declaration, Principle 15.
40 Rio Declaration, Principle 10.
41 Rio Declaration, Principle 17.

43 Our Common Future. Paragraph 27.


55 Convention on the Rights of the Child
56 Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer
57 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
58 Convention on Biological Diversity
59 United Nations Framework Convention on Climate Change
60 Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa
61 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin
62 Convention on the Law of the Non-navigational Uses of International Watercourses
63 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
64 Stockholm Convention on Persistent Organic Pollutants
65 International Treaty on Plant Genetic Resources for Food and Agriculture
66 ASEAN Agreement on Transboundary Haze Pollution
67 Minamata Convention on Mercury
68 CRC Article 6 recognizes a child’s inherent right to life. Article 24 recognizes a child’s right to health. States must combat disease and malnutrition and provide clean drinking water, taking environmental pollution into account.
69 The CBD does not guarantee a right to a healthy environment. In the preamble, the CBD acknowledges the link between biodiversity and human health and Article 8(g) requires States to take into account the risks to human health that living modified organisms may cause.
70 The preamble of the Paris Agreement acknowledges the rights of children and the right to health.
71 The POPs Convention does not recognize a right to health, but Article 7 requires Parties to consult groups involved in the health of children in preparing plans to implement the Convention.
72 The Minamata Convention does not recognize rights to life, health or environment but the preamble acknowledges health concerns for children resulting from exposure to mercury. Annex C requires Parties to develop action plans that include strategies to prevent the exposure of children to mercury used in artisanal mining.
73 CRC Article 27.1 recognizes every child’s right to a standard of living that is adequate for the child’s physical, mental, spiritual, moral and social development.
111 Pesticides in International Trade.

107 UNFCCC Article 6 creates the obligation to develop and implement educational and public awareness programmes on climate change and its effects. Article 12 of the Paris Agreement requires Parties to cooperate in taking measures to enhance climate change education.

106 UNCCD Article 19 creates the obligation to develop and exchange educational and public awareness material.

105 POPs Article 10 creates the obligation to develop and implement, especially for women, children and the least educated, educational and public awareness programmes on persistent organic pollutants, as well as on their health and environmental effects and on their alternatives.

Minamata Article 18 creates the obligation to provide education about the effects of exposure to mercury on human health and the environment.

103 CRC Article 13 guarantees a child’s right to freedom of expression and to information.

102 UNFCCC Article 6 requires that Parties provide public access to information on climate change and its effects. Article 12 of the Paris Agreement similarly requires public access to information.

101 UNCCD Article 16 requires exchanging and making fully, openly and promptly available information from all publicly available sources relevant to combating desertification and mitigating the effects of drought.

100 World Health Organization. Children suffer most from the effects of ozone depletion.

99 The preamble to the UNWC expresses the conviction that it will ensure that international watercourses are sustainably managed and protected for present and future generations.


97 CRC Article 29.1.(e) stipulates that education must be directed to the development of respect for the natural environment.

96 CRC Article 31 recognizes a child’s right to play and recreational activities.

95 CRC Article 29.1.(e) stipulates that education must be directed to the development of respect for the natural environment.

94 Article 19 of the Minamata Convention creates a general obligation to assess the impacts of mercury on human health and the environment. Article 12 requires using human health and environmental risk assessments for managing sites that are already contaminated by mercury.

93 CRC Article 12 requires States to guarantee a child’s right to be heard in all matters that affect the child.

92 CRC Article 3 requires States to ensure that private social welfare institutions keep the best interests of the child as a primary consideration.

91 Article 13.2(d) creates the obligation to take measures involving the private sector in order to achieve commercial benefit-sharing.

90 CRC Article 2 requires States to protect a child from all forms of discrimination.

89 Article 4.1.(f) requires using tools like impact assessment to minimize adverse effects of climate change on human health and the environment. Article 7.9.(c) of the Paris Agreement calls for assessing climate change impacts on vulnerable people, which would include children, as part of planning for adapting to climate change.

88 Article 19 of the Minamata Convention acknowledges the health concerns, especially in developing countries, resulting from exposure to mercury of vulnerable populations, especially for women, children, and, through them, future generations.

87 World Health Organization. Children suffer most from the effects of ozone depletion.

86 The preamble to the Minamata Convention acknowledges the health impacts of persistent organic pollutants on women also affect future generations.

85 The preamble to the ITPGRFA acknowledges that plant genetic resources are essential for agriculture to adapt to unpredictable environmental changes and future human needs and the responsibility to future generations to conserve the world’s diversity of plant genetic resources for food and agriculture.

84 Article 13 guarantees a child’s right to freedom of expression and to information.


82 UNFCCC Article 6 requires that Parties provide public access to information on climate change and its effects. Article 12 of the Paris Agreement similarly requires public access to information.


77 The preamble to the Minamata Convention acknowledges the health impacts of persistent organic pollutants on women also affect future generations.

76 Article 13 guarantees a child’s right to freedom of expression and to information.


74 The preamble to the Minamata Convention acknowledges the health impacts of persistent organic pollutants on women also affect future generations.


24


Special Rapporteur’s report on children’s rights and environmental protection. Paragraph 78.


Special Rapporteur’s report on children’s rights and environmental protection. Paragraph 80.


Special Rapporteur’s report on children’s rights and environmental protection. Paragraphs 71-77, 79.