Discussion Paper:
Children’s Right to a Healthy Environment in East Asia and the Pacific

September 2020
Acknowledgements

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Cover photo

Village of Itaita, Middle Bush, Tanna in Vanuatu where the community took time out to play traditional games or Nawakilan as they are called. Photo by Josh Estey/UNICEF.
# Contents

List of Abbreviations .................................................................................................................. 1
Preface ........................................................................................................................................... 2
Executive Summary ....................................................................................................................... 5

## Parts

Part I: Progress in recognising children’s right to a healthy environment ........................................ 20
Part II: Children’s education, engagement and participation in environmental affairs .................. 26
Part III: Children’s right to a healthy environment and the role of the business sector .................. 35
Conclusions and recommendations .................................................................................................. 42

## Analysis Matrices

Analysis categories table ................................................................................................................. 47
Cambodia ......................................................................................................................................... 49
Fiji .................................................................................................................................................. 52
Indonesia ......................................................................................................................................... 59
Mongolia ......................................................................................................................................... 67
Viet Nam ......................................................................................................................................... 76
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
</tr>
<tr>
<td>AICHR</td>
<td>ASEAN Intergovernmental Commission on Human Rights</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
</tr>
<tr>
<td>CERI</td>
<td>Children’s Environmental Rights Initiative</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child 1989</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agriculture Organisation of the United Nations</td>
</tr>
<tr>
<td>GCF</td>
<td>Green Climate Fund</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights 1966</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights 1966</td>
</tr>
<tr>
<td>IGO</td>
<td>Intergovernmental organisation</td>
</tr>
<tr>
<td>NAP</td>
<td>National Adaptation Plan</td>
</tr>
<tr>
<td>NAP BHR</td>
<td>National Action Plan on Business and Human Rights</td>
</tr>
<tr>
<td>NDC</td>
<td>Nationally Determined Contribution</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
</tr>
<tr>
<td>OEIGWG</td>
<td>Open-ended Intergovernmental Working Group</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
</tr>
<tr>
<td>Paper</td>
<td>Discussion Paper on Children’s Right to a Healthy Environment in East Asia and the Pacific</td>
</tr>
<tr>
<td>Region</td>
<td>East Asia and the Pacific</td>
</tr>
<tr>
<td>Review Countries</td>
<td>Cambodia, Fiji, Indonesia, Mongolia and Viet Nam</td>
</tr>
<tr>
<td>SDGs</td>
<td>United Nations Sustainable Development Goals</td>
</tr>
<tr>
<td>UNSR HRD</td>
<td>United Nations Special Rapporteur on the Situation of Human Rights Defenders</td>
</tr>
<tr>
<td>UNSR HRE</td>
<td>United Nations Special Rapporteur on Human Rights and the Environment</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNEP</td>
<td>United Nations Environment Programme</td>
</tr>
<tr>
<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change 1992</td>
</tr>
<tr>
<td>UNGPs</td>
<td>United Nations Guiding Principles on Business and Human Rights 2011</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
</tr>
<tr>
<td>UNICEF EAPRO</td>
<td>United Nations Children’s Fund East Asia and Pacific Regional Office</td>
</tr>
</tbody>
</table>
Preface

Purpose and Scope of Paper

1.1 This discussion paper (the Paper) has been prepared to:

(a) facilitate the exchange of knowledge and stimulate discussion on children’s right to a healthy environment in East Asia and the Pacific (the Region),
(b) consider how different legal systems approach children’s right to a healthy environment in the Region,
(c) help identify strategies and best practices that can be implemented to promote children’s right to a healthy environment, and
(d) improve national and regional stakeholders’ understanding of the relationship between child rights and environmental issues.

1.2 The findings in this Paper are based upon a review of the laws relating to the right of the child to a healthy environment from a sample of five countries in the Region: Cambodia, Fiji, Indonesia, Mongolia and Viet Nam (together the Review Countries).

1.3 The laws considered by this Paper include laws that were enacted in the Review Countries since the adoption of the Convention on the Rights of the Child 1989 (CRC) and August 2019. The CRC entered into force for each of the Review Countries within a few years of its adoption.

1.4 This Paper is informed by the report of the former United Nations Special Rapporteur on Human Rights and the Environment (UNSR HRE) on children’s rights and the environment. The preparation of this Paper began prior to the second expert consultation for the Children’s Environmental Rights Initiative (CERI), which the authors attended. It therefore addresses and is informed by topics discussed at that CERI expert consultation and has since been updated to incorporate feedback from attendees and other stakeholders.

Structure of Paper

1.5 This Paper is comprised of the following sections:

(a) Executive Summary: this section summarises the extent to which children’s right to a healthy environment is supported by national law in the Review Countries. It identifies common themes, examples of notable challenges and priority issues, as well as examples of positive developments and the different approaches adopted by the countries considered. It concludes with recommendations aimed at promoting children’s right to a healthy environment in the Region.

(b) Parts I, II and III: which provide more detailed findings from the Review Countries on the following themes:

(i) progress in recognising children’s right to a healthy environment,
(iii) children’s education, engagement and participation in environmental affairs, and

(iii) children’s right to a healthy environment and the role of the business sector.

Each Part concludes with a list of suggested priority issues for further consideration.

(c) **Conclusions and Recommendations**: this section outlines conclusions and recommendations to promote children’s right to a healthy environment in the Region.

(d) **Analysis Matrices**: the Analysis Matrices guide the analysis presented in this Paper. They provide a detailed, categorised list of national legal instruments, such as constitutions, primary and secondary legislation, and policies that have been located and assessed as relevant to the right of the child to a healthy environment in each of the Review Countries. The Analysis Matrices may provide a practical tool for policymakers, researchers and child or youth-focused organisations engaging with national law and policy on the topic of children’s right to a healthy environment.

The Analysis Categories Table (in purple) outlines the substantive categories that have been considered to assess the responsiveness of national legal instruments to children’s right to a healthy environment, e.g. to climate change or water pollution concerns. These substantive elements have been largely sourced from the report of the former UNSR HRE.6

The Analysis Matrix for each Review Country is made up of two parts:

(i) an overview table (in blue) providing detail that is relevant to the legal context of children’s right to a healthy environment in that country, e.g. whether that Review Country has ratified the Optional Protocols to the CRC, and

(ii) a detailed table (in orange) which provides a categorised list of national legal instruments that have been located and assessed as responsive to children’s right to a healthy environment in that Review Country, i.e. categorised according to the matters listed in the Analysis Categories Table.

**Methodology and Limitations of Paper**

1.6 Research was based on desk studies of primary legal materials and academic literature, consultations with UNICEF Country Offices,7 the work of the pro bono legal team of the UNSR HRE8 and discussions with experts and youth participants of the second CERI expert consultation.9

1.7 The scope of national laws considered include laws enacted in the Review Countries between the adoption of the CRC in 1989 and August 2019. The methodology for selecting relevant national legal instruments involved identifying express references to children’s right to a healthy environment, and otherwise assessing whether a national legal instrument could

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6 UNSR HRE Report (n 3).
7 UNICEF Country Offices were consulted in relation to Fiji, Indonesia and Mongolia.
8 Inputs from local lawyers were obtained on a non-reliance basis in relation to Indonesia, Mongolia and Viet Nam.
9 See para 1.4 of this Paper for more details.
be interpreted as applicable. A broad approach to interpretation was adopted. As such, the Analysis Matrices capture national legal instruments that expressly refer to the right to a healthy environment in general, or can otherwise be interpreted as applicable to substantive elements of children’s right to a healthy environment. As the right of the child to a healthy environment has yet to be defined in international law, the elements of that right were largely modelled on the 2018 report of the former UNSR HRE on the rights of children in relation to the environment, as set out in the Analysis Categories Table.¹⁰ The United Nations Sustainable Development Goals (SDGs) were not a focus of this study beyond aspects that were already considered in the aforementioned UNSR HRE report. There was no specific consideration of issues relating to gender, disability, indigenous peoples, migration or displacement within the methodology of this Paper.

1.8 While this study endeavoured to be as comprehensive as possible, it should not be considered as exhaustive. Due to financial and time limitations, the study focused on five countries across the Region. Due to practical limitations the Paper does not comprehensively consider all laws that directly or indirectly regulate business respect for children’s right to a healthy environment (see Part III). Further limitations included difficulty securing current legal sources in their native language and reliable English translations. As such, a comprehensive case law review was not conducted for any of the Review Countries and the national legal instruments identified in the Analysis Matrices may not be exhaustive of all legal instruments that have been enacted since 1989. The availability of local input was limited to the consultations mentioned at 1.6 above, which resulted in the consideration of national legal instruments and case law that went beyond our initial methodology. This work is not meant to be a comprehensive analysis so much as a tool to initiate discussions around promoting children’s right to a healthy environment in the Region. Further engagement with national and regional stakeholders, as well as additional analysis in other countries in the Region would enhance the findings in this study.

¹⁰ UNSR HRE Report (n 3). See Analysis Categories Table at page 47 of this Paper for more details.
Executive Summary

Climate and environmental challenges risk undermining children’s right to a healthy environment in all Review Countries

2.1 All of the Review Countries (Cambodia, Fiji, Indonesia, Mongolia and Viet Nam) are vulnerable to the impacts of climate change and environmental degradation, whether by reason of their geography or economic factors, such as being in a state of rapid development, industrialisation and urbanisation. Climate and environmental challenges such as increased average temperatures, air pollution, water pollution, deforestation, poor waste management, unsustainable use of land and natural resources, and the use of chemicals and pesticides were identified across all of the Review Countries, noting that the Region is also one of the most vulnerable to climate-related disasters.11

2.2 In this context there are significant environmental challenges that risk undermining children’s right to a healthy environment across all of the Review Countries. For example, children are vulnerable to arsenic exposure in many regions of Cambodia,12 extreme levels of air pollution in Mongolia and Viet Nam,13 the impacts of deforestation and loss of biodiversity in Indonesia,14 and extreme weather events such as storms and flooding, as well as slow-onset events such as sea level rise, in Fiji.15 Scientific research indicates that for a variety of reasons, the impacts of these environmental challenges are different or more pronounced for children than they are for adults.16

The CRC and children’s right to a healthy environment

2.3 The CRC offers a strong normative framework for children’s right to a healthy environment.17 Articles 24 and 29 of the CRC directly reference the environment, while many other articles have strong environmental dimensions or content that reinforce children’s right to a healthy environment, as outlined in Figure 1. Each of the Review Countries is a party to the CRC.18 However, as of the date of this publication, only Mongolia has ratified the Optional Protocol to the Convention on the Rights of the Child on a

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18 See Analysis Matrices, Cambodia acceded to the CRC in 1992; Fiji ratified in 1993; Indonesia, Mongolia and Viet Nam each ratified in 1990.
communications procedure\textsuperscript{19}, which allows the Committee on the Rights of the Child to hear complaints from children, groups of children, or their representatives that claim a violation by the State of their rights under the CRC.

**Figure 1:** Articles from the *Convention on the Rights of the Child 1989* that are relevant to children’s right to a healthy environment\textsuperscript{20}

<table>
<thead>
<tr>
<th>CRC article</th>
<th>Full text of article</th>
</tr>
</thead>
</table>
| 2 | 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.  
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. |
| 3(1) | 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. |
| 4 | States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention… |
| 6 | 1. States Parties recognize that every child has the inherent right to life.  
2. States Parties shall ensure to the maximum extent possible the survival and development of the child. |
| 12 | 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.  
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. |
| 13(1) | 1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. |
| 15(1) | 1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. |
| 17 | States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health… |
| 24(1), (2)(c), (2)(e) | 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.  
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:  
…  
(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of |

\textsuperscript{19} Opened for signature 19 December 2011, UNGA 66\textsuperscript{th} sess, Agenda Item 64, UN Doc No. A/RES/66/138 (entered into force 14 April 2014); Mongolia ratified in 2015.  
\textsuperscript{20} Informed by the analysis of Kaime (n 17). This is not an exhaustive list.
adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents.

27(1)
1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

29(1)(e)
1. States Parties agree that the education of the child shall be directed to:

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

31
1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

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

42
States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Part I: progress in recognising children’s right to a healthy environment

2.4 At a national level, the majority of Review Countries explicitly recognise and protect a legal right to a healthy environment in their national constitutions, with Cambodia being the only exception.\textsuperscript{21} Constitutional protection of a right is significant because a constitution is the supreme source of law in national legal systems. Of the Review Countries, only Fiji explicitly draws a link between its constitutional right to a healthy environment and children, by providing that this right includes the protection of the natural world for the benefit of “present and future generations.”\textsuperscript{22} This is significant in the context of children’s rights, as children are typically considered to represent the conceptual link between present and future generations.

2.5 Most of the Review Countries recognise the right to a healthy environment in national legislation, but explicit links to children’s right to a healthy environment are limited (see Part I). Only Viet Nam creates an express connection between children’s rights and environmental protection, by requiring environmental protection to be in harmony with the protection of children’s rights.\textsuperscript{23} Where the right to a healthy environment is expressed as a right for all citizens without any child-specific references, the effect of such expression should be to protect the right to a healthy environment in respect of children. The risk, however, is that child-specific issues might not be adequately considered.\textsuperscript{24}

2.6 At a regional level, ASEAN member States Cambodia, Indonesia and Viet Nam have adopted the non-binding ASEAN Human Rights Declaration, which expressly recognises a

\textsuperscript{21} See Analysis Matrices from page 47 of this Paper.

\textsuperscript{22} Constitution of the Republic of Fiji 2013 art 40(1).

\textsuperscript{23} Law on Environmental Protection No.55/2014 (Viet Nam) art 4(2) states: “Environmental protection must harmonize with the economic growth, social security, assurance about the children’s right, promotion of gender equality, development and conservation of biodiversity, response to climate changes, in order to ensure the human right to live in a pure environment.”

\textsuperscript{24} See Part I from page 20 of this Paper for further details.
right to a safe, clean and sustainable environment,\textsuperscript{25} although this right is not specifically directed at children.

2.7 Our findings indicate that there has been a steady increase in national legislation relevant to children’s right to a healthy environment across the Review Countries.\textsuperscript{26} Figure 2 below illustrates that almost 140 relevant national laws have been enacted across the Review Countries between 1989 and 2019.\textsuperscript{27} Further, as displayed in Figure 3, there have been several sharp increases in enacted legislation across the Review Countries during periods of legislative reform.

**Figure 2**: Cumulative increase in national legislation relevant to children’s right to a healthy environment across Review Countries since 1989

\textsuperscript{25} ASEAN Human Rights Declaration 2012 art 28(f).

\textsuperscript{26} National legislation for each Review Country is identified under the ‘laws’ category in the Analysis Matrices from page 49 of this Paper.

\textsuperscript{27} See para 1.7 of this Paper for our assessment methodology.
**Figure 3**: Enactment of national legislation and international treaties relevant to children’s right to a healthy environment across Review Countries since 1989

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full name</th>
<th>When did the Review Countries join the treaty?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abbreviation</td>
<td>Full name</td>
<td>When did the Review Countries join the treaty?</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>IT PGRFA 2001</td>
<td>International Treaty on Plant Genetic Resources for Food and Agriculture 2001</td>
<td>Cambodia (approved 2002), Fiji (acceded 2008), Indonesia (acceded 2006), Mongolia (acceded 2018)</td>
</tr>
<tr>
<td>ASEAN Haze 2002</td>
<td>ASEAN Agreement on Transboundary Haze Pollution 2002</td>
<td>Cambodia (ratification or approval 2006), Viet Nam (ratification or approval 2003)</td>
</tr>
<tr>
<td>ASEAN HRD 2012</td>
<td>ASEAN Human Rights Declaration</td>
<td>Cambodia (adopted 2012), Indonesia (adopted 2012), Viet Nam (adopted 2012)</td>
</tr>
<tr>
<td>Minamata 2013</td>
<td>Minamata Convention on Mercury 2013</td>
<td>Cambodia (signed 2013), Indonesia (ratified 2017), Mongolia (ratified 2015), Viet Nam (approved 2017)</td>
</tr>
<tr>
<td>PA 2015</td>
<td>Paris Agreement 2015</td>
<td>Cambodia (ratified 2017), Fiji (ratified 2016), Indonesia (ratified 2016), Mongolia (ratified 2016), Viet Nam (approved 2016)</td>
</tr>
</tbody>
</table>
2.8 Each of the Review Countries, with the possible exception of Cambodia, has legislation or policy in place that directly or indirectly addresses, to a greater or lesser extent, most of the substantive elements of children’s right to a healthy environment. Figure 4 displays a gap analysis drawn from the Analysis Matrices, and indicates an assessment of the law and policy of the Review Countries against a number of substantive and procedural elements of children’s right to a healthy environment.

2.9 Cambodia has more gaps in Figure 4 than the other Review Countries, with no law or policy affecting more than half of the categories that indicate substantive and procedural elements of children’s right to a healthy environment. None of the Review Countries express a clear legal position on the responsibility of businesses to respect children’s right to a healthy environment. Only Indonesia and Viet Nam include references to children in their Nationally Determined Contributions (NDCs) under the United Nations Framework Convention on Climate Change 1992 (UNFCCC) regime, whereas only Fiji has submitted its National Adaptation Plan (NAP) in which child-specific measures identify children as “active agents of change”. Notably, in each Review Country there were a variety of legal instruments (typically aimed at child protection, human rights or environmental matters) that addressed different substantive or procedural elements of children’s right to a healthy environment, rather than a singular unified source of law.

Figure 4: Gap analysis of national legal instruments that directly or indirectly address key elements of children’s right to a healthy environment

<table>
<thead>
<tr>
<th>Category</th>
<th>Cambodia</th>
<th>Fiji</th>
<th>Indonesia</th>
<th>Mongolia</th>
<th>Viet Nam</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Air Pollution</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>2. Water Pollution</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>3. Climate Change</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>4. Chemicals, toxic substances and waste</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>5. Loss of biodiversity and access to nature</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>6. Mining</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>7. Children’s rights to life, health and development</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

*These observations are of course subject to the limitations of this study, as outlined at paras 1.7 – 1.8 of this Paper.*

*The methodology for our assessment is outlined at para 1.7 of this Paper.*

*This observation is of course subject to the limitations of this study, as outlined at paras 1.7 – 1.8 of this Paper.*


*See Analysis Matrices from page 47 of this Paper.*

*See Analysis Matrices from page 47 of this Paper.*


*This table reflects the categories used in the Analysis Categories Table at page 47 of this Paper and provides an overview of the data captured in the Analysis Matrices from page 49 onwards.*
<table>
<thead>
<tr>
<th>Category</th>
<th>Cambodia</th>
<th>Fiji</th>
<th>Indonesia</th>
<th>Mongolia</th>
<th>Viet Nam</th>
</tr>
</thead>
<tbody>
<tr>
<td>8  Children’s rights to an adequate standard of living</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>x</td>
</tr>
<tr>
<td>9  Children’s rights to play and recreation</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>10 Children’s rights to an environmental education</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>11 State obligation to collect, update and disseminate environmental information</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>12 Public access to environmental information</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>13 Children’s rights to express views and have them considered</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>14 Participatory rights of children on environmental matters</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>15 Protection of children from reprisals for participating or expressing views on environmental matters</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>x</td>
</tr>
<tr>
<td>16 Effective remedies for children’s rights violation</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
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<td>17 Non-discrimination in children’s equal enjoyment of rights relating to a safe, clean, healthy and sustainable environment</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>18 State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed projects</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>19 State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed policies</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>20 Regulation of businesses (including State-owned) to protect children from environmental harm. Includes obligation for businesses to conduct ‘child-rights due diligence’ for actual and proposed actions on the rights of children through environmental harm.</td>
<td>x</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>x</td>
</tr>
<tr>
<td>Category</td>
<td>Cambodia</td>
<td>Fiji</td>
<td>Indonesia</td>
<td>Mongolia</td>
<td>Viet Nam</td>
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<tr>
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</tr>
<tr>
<td>21 Binding obligations on businesses to comply with the:</td>
<td></td>
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<tr>
<td>Guiding Principles on Business and Human Rights;</td>
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<tr>
<td>Children’s Rights and Business Principles;</td>
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</tr>
<tr>
<td>Recommendations of the Committee on the Rights of the Child in its general comment No. 16.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22 State obligation to adopt/implement environmental standards consistent with the best available science and international health and safety standards, or on the basis of the precautionary principle</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>23 State obligation to cooperate with other States to address global/transboundary harm.</td>
<td>x</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>24 State obligation to provide access to court remedies for environmental harm by businesses in their State of incorporation as well as where the harm is alleged to occur</td>
<td>x</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
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</table>

Part II: children’s education, engagement and participation in environmental affairs

2.10 As outlined in the *Framework Principles on Human Rights and the Environment*\(^{36}\), the obligations of States in relation to human rights and the environment include duties relating to education and public awareness, freedom of expression, association and peaceful assembly, public access to environmental information and participation in environmental decision-making.\(^{37}\) In the context of children’s rights, fulfilling these obligations ensures that children can influence environmental policy that affects them, and also strengthens the capacity of children to protect themselves from environmental harm.\(^{38}\)

2.11 As set out in Part II of this Paper, examples were found in all Review Countries of children and youth expressing their views on environmental affairs via organisations, events and initiatives that were led by, or focussed on, the active engagement and participation of children and youth. There were particularly clear and frequent examples of children and youth expressing their views on the subject of climate change. Various strategies, initiatives

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\(^{37}\) Ibid principles 5-10.

\(^{38}\) UNSR HRE Report (n 3) [39].
and other practices to support child and youth engagement and participation in environmental affairs were also found across the Review Countries.39

2.12 With the exception of Cambodia, all of the Review Countries legally recognise the rights of children and youth to participate in decision-making and rights to an environmental education. All of the Review Countries recognise public rights of access to environmental information in law, yet practical access to this information remains a challenge for children.40

2.13 Despite legal recognition of the rights of children to participate in environmental matters, children continue to be dismissed, trivialised or obstructed by adults and authorities in their attempts to address matters that affect their rights. There are also significant concerns around adequate protection for human rights defenders, including environmentalists and children’s rights defenders, across most of the Review Countries. The existence of laws recognising children’s rights to participate in environmental decision-making or to express their views on environmental affairs is no guarantee of effectiveness where there is inadequate protection from reprisals.41

Part III: children’s right to a healthy environment and the role of the business sector

2.14 It is well recognised that businesses have a responsibility to respect children’s rights,42 as well as human rights in general.43 Children experience differentiated impact compared to adults when their rights are adversely affected by the operations and activities of business enterprises. For example, children are often politically voiceless, children typically face difficulty securing remedies through the courts or other mechanisms, and childhood is a unique state of development such that a breach of children’s rights can have enduring lifelong consequences.44 Therefore, any consideration of the adverse impact of business activities on children’s rights, including their right to a healthy environment, requires an appreciation of child-specific concerns. The Children’s Rights and Business Principles provide a framework for understanding and addressing the impact of business on the rights and well-being of children46 and expressly recognise that all businesses should respect and support children’s rights in relation to the environment.47

2.15 The gap analysis at Figure 4 demonstrates that none of the Review Countries clearly reference key international standards on the impacts of business activities on children’s rights in national law or policy; namely the UN Guiding Principles on Business and Human Rights (UNGPs),48 Children’s Rights and Business Principles, or recommendations of the Committee on the Rights of the Child in its General Comment 16.49 Further, none of the Review Countries require child-specific concerns to be considered as part of legally required environmental impact assessments for proposed projects or policies.50

39 See Part II of this Paper for further details.
40 See Part II of this Paper for further details.
41 See Part II of this Paper for further details.
42 See 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); UNSR HRE Report (n 3) [62].
44 See Committee on the Rights of the Child (n 42) [1].
45 Children’s Rights and Business Principles (2012) <https://www.unglobalcompact.org/library/63>. These principles were developed by Save the Children, the United Nations Global Compact and UNICEF.
46 Ibid 2.
49 Committee on the Rights of the Child (n 42).
50 See categories 18 and 19 in Figure 4.
None of the Review Countries have formally published a binding National Action Plan on business and human rights (NAP BHR) to disseminate and implement the UNGPs, as recommended by the UN Working Group on Business and Human Rights. A NAP BHR provides an opportunity for countries to reinforce their policy position on respecting, protecting and fulfilling children’s right to a healthy environment, while providing the business sector with clear guidance on expectations where business activities have the potential to impact this right.

Only Indonesia and Mongolia are in the process of developing a NAP BHR. Notably, Indonesia’s national human rights institution launched a recommended NAP BHR in 2017 to inform the nation’s legislative and policymaking agenda, which focuses on the adverse impact of business activities on children’s rights, including their right to a healthy environment. Indonesia was also the only Review Country to participate in recent negotiations on a draft multilateral treaty on business activities and human rights, which currently operates to promote children’s right to a healthy environment in a number of ways (see Part III for further details).

Recognising that States typically seek to minimise the risk of adverse impacts from business activities through a variety of legislative and regulatory measures, there are existing laws across the Review Countries that directly and indirectly regulate business respect for children’s right to a healthy environment, by ensuring protection from environmental harm. A full assessment of these laws was beyond the scope of this study and further analysis would enhance the findings in this Paper.

**Key challenges**

A number of overarching challenges to effectively fulfil children’s right to a healthy environment were noted through the course of this study:

(a) **Inconsistent implementation and enforcement of existing national law.** Despite progress in recognising children’s right to a healthy environment in national law and policy, the reality on the ground is one of inconsistent implementation and enforcement across all of the Review Countries. Constraints in human, technical and financial resources, as well as a lack of adequate capacity at a policymaking or implementation level, are reported in all Review Countries as an impediment to the effective implementation of existing laws that directly or indirectly protect children’s right to a healthy environment. The result is that many powerful rights that have been enacted by the Review Countries are being lost at the implementation level through low levels of monitoring and enforcement. This is particularly challenging in the context of children’s rights, since children typically do not possess legal standing (the right to bring a claim before the court), knowledge of remedy mechanisms, financial resources, or adequate legal representation to press for effective enforcement of their rights.

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52 Ibid.
53 Ibid.
55 Ibid annex I.
56 See Analysis Matrices from page 47 of this Paper.
57 See Parts I and III of this Paper for further details.
58 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) ch 22 [4.3]; Committee on the Rights of the Child (n 42) [I];
To meet their duty to respect, protect and fulfil children’s right to a healthy environment, States must be able to implement and enforce their existing laws that directly or indirectly protect that right.

(b) **A lack of guidance on what constitutes children’s right to a healthy environment.** Common to most Review Countries was a lack of clarity on what constitutes children’s right to a healthy environment in national law. While the UNSR HRE has provided guidance to clarify the scope of this right in international law, the research conducted for this Paper indicates that there remains a clear absence of practical guidance to inform and assist children, policymakers, judicial decision-makers, businesses and other relevant stakeholders at a national level. This lack of clarity appears to have contributed to low levels of policy coherence and collaboration across government agencies, as typically the protection of children’s rights and the environment are split between the mandates of different government agencies.

(c) **Low levels of awareness of children’s right to a healthy environment in key institutions.** While a significant body of national law addresses environmental or children’s rights in each of the Review Countries, and a wide range of actors are involved in each of these fields, the study conducted for this Paper identified infrequent examples of Review Countries drawing a clear connection between the two issues in a coherent regional or national approach to children’s right to a healthy environment. This appeared largely attributable to an overarching disconnect between children’s rights and environmental rights at a policymaking level and across government agencies.

**Recommendations**

2.20 With respect to children’s right to a healthy environment, it is recommended on the basis of the study conducted for this Paper, that States in the Region:

(a) **Ensure the effective implementation and enforcement of existing national law that directly or indirectly respects, protects and fulfils children’s right to a healthy environment.** As part of this commitment, States in the Region are encouraged to build upon the findings in this Paper to comprehensively audit their national law to identify the extent to which children’s right to a healthy environment is respected, protected and fulfilled by national law and where gaps remain. National human rights institutions and relevant IGOs may be able to help States in the Region to identify where their existing laws are aligned with their children’s rights obligations. Similarly, civil society organisations may be able to help identify where implementation and enforcement lacking. States in the Region are advised to swiftly enact subsidiary legislation or regulation that is necessary to ensure the effective implementation and enforcement of relevant primary legislation. It is recommended that government agencies and ministries with a mandate to monitor and enforce relevant law are identified and encouraged to create cross-governmental links, to ensure a cohesive approach that avoids duplicated effort. States in the Region are urged to allocate specific and adequate resources, including budget, personnel, and technical capacity, to ensure that national laws

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59 UNSR HRE Report (n 3).
60 See Parts I and III of this Paper for further details.
61 See Parts I, II and III of this Paper for further details.
pertaining to children’s right to a healthy environment are effectively implemented and enforced.

(b) **Develop regional guiding principles on children’s right to a healthy environment** to provide practical guidance to inform and assist children, policymakers, judicial decision-makers, businesses and other relevant stakeholders with consistent implementation and enforcement of children’s right to a healthy environment. It is recommended that the development of guiding principles brings together experts on children’s right to a healthy environment, along with key stakeholders from relevant government agencies, policymakers, courts, the business sector, civil society organisations and IGOs focussed on children’s and environmental rights. It is further recommended that the development process ensures the meaningful participation of children and requires public consultation. Publication of any guiding principles should include a child-friendly version. Any guiding principles developed at a regional level should take account of and be consistent with efforts to develop normative and practical guidance on children’s right to a healthy environment at an international level, including the efforts of the CERI under the auspices of the UNSR HRE, IGOs such as the OHCHR, UNICEF and UNEP, as well as any general comment issued by the Committee on the Rights of the Child on this topic. Further, it is strongly advised that any guiding principles are informed by the obligation of non-discrimination under the CRC, to ensure that the rights of children most vulnerable to environmental harm are adequately considered.

(c) **Raise public awareness of the nexus between children’s rights and the environment at a regional and national level.** States in the Region are encouraged to identify which ministries are responsible for collecting, updating and disseminating environmental information and to allocate sufficient resources to those ministries to ensure that such responsibilities are effectively implemented. States in the Region are urged to raise awareness of children’s right to a healthy environment through regional forums, national government, the business sector and civil society. National human rights institutions are encouraged to adopt a multi-sectoral approach that incorporates a focus on, and raises awareness of, the nexus between environmental and children’s rights. It is recommended that public information campaigns raise awareness about the content of children’s right to a healthy environment and who the rights-holders and duty-bearers of that right are, as well as avenues to access remedies. Such public information campaigns must be practically accessible for children and easy to understand. Pregnant women and parents of young children should be a particular focus, to raise awareness about the environmental risks to unborn children and young infants. States in the Region are advised to assess whether the content of their respective national environmental education curriculums is sufficient to educate children about their environmental rights and to strengthen their capacity to respond to environmental challenges. Children’s environmental education should begin early, continue throughout the educational process,\(^ {62}\) and comprise both formal and informal educational settings such as schools, at home and in the community.\(^ {63}\)

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(d) Develop a National Action Plan on business and human rights (NAP BHR) which recognises key international standards and child-specific concerns. States in the Region are strongly encouraged to develop a NAP BHR and to use the development process as an opportunity to audit whether the current implementation, monitoring and enforcement of existing laws is sufficient to ensure business respect for children’s right to a healthy environment. Any gaps can then be identified and addressed. In their NAP BHR, States in the Region are strongly recommended to include a focus on the protection of children’s rights, and to commit to clear policy positions on implementing and disseminating key international standards to promote business respect for children’s right to a healthy environment; namely the *UN Guiding Principles on Business and Human Rights (UNGPs)*,64 *Children’s Rights and Business Principles* (especially Principles 4 and 7) and Committee of the Rights of the Child General Comment No 16. Government agencies with a mandate relevant to business respect for children’s right to a healthy environment should be clearly identified, to ensure collaboration occurs on this issue. In developing their NAP BHR, States in the Region are urged to undertake public consultation with a wide range of stakeholders, including children, civil society organisations focussed on children’s rights, the business sector and relevant government agencies. States in the Region are also advised to ensure that the business sector has sufficient guidance and support to respect children’s right to a healthy environment in their activities.

(e) Integrate the consideration of children’s rights into existing environmental impact assessments for proposed projects and policies. Where environmental impact assessments form a prerequisite to implementing national policies, or infrastructure, natural resources, urban planning and other projects, States in the Region are encouraged to incorporate specific consideration of the impact of that policy or project on children’s right to a healthy environment. States in the Region are advised to also ensure that agencies and institutions responsible for conducting, monitoring and enforcing the outcome of environmental impact assessments are sufficiently informed about children’s right to a healthy environment and have access to sufficient resources and capacity to implement their responsibilities effectively.

(f) Collaborate with neighbouring States to share best practices and formulate effective responses to transboundary environmental harm to the rights of children where they are not adequately addressed. States in the Region may seek to collaborate through existing regional mechanisms such as ASEAN, or through establishing new mechanisms that are specifically focussed on children’s right to a healthy environment.

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(g) Ensure that children and human rights defenders, including children’s rights defenders and environmentalists, are protected from reprisals. States in the Region are strongly encouraged to ensure that there is sufficient public awareness, understanding and protection of human and children’s rights defenders and environmentalists. In particular, children should be protected from reprisals for their participation in environmental decision-making or for otherwise expressing their views on environmental matters.

(h) Request that the Committee on the Rights of the Child consider adopting a general comment on children’s right to a healthy environment. A general comment could provide authoritative clarification of the application of the CRC in relation to children’s right to a healthy environment and would assist States with implementation of their CRC obligations.

(i) Consider becoming parties to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure to allow the Committee on the Rights of the Child to hear complaints from children, groups of children, or their representatives, where their rights under the CRC are violated. States in the Region are also encouraged to ensure that children and youth have adequate and effective access to national grievance mechanisms to secure a remedy for any breach of their right to a healthy environment.
Part I

Progress in recognising children's right to a healthy environment
Progress in recognising children’s right to a healthy environment

The majority of Review Countries recognise a constitutional right to a healthy environment

3.1 With the exception of Cambodia, all of the Review Countries explicitly recognize and protect a legal right to a healthy environment in their national constitutions.\(^{65}\) Constitutional protection of a right is significant since a constitution is the supreme source of law in national legal systems. A recent report of the UNSR HRE indicates that this is reflective of a global trend – the right to a healthy environment now enjoys constitutional protection in 110 countries.\(^{66}\)

3.2 In Indonesia, Mongolia and Viet Nam, the right to a healthy environment is expressed in general terms and is not specific to children.\(^{67}\) Fiji, however, constitutionally recognizes a right to a healthy environment that includes protection of the natural world for present and future generations.\(^{68}\) This is important in the context of children’s rights, as children are typically considered to represent the conceptual link between present and future generations. Further, Viet Nam constitutionally recognizes responsibilities relating to climate change.\(^{69}\) While Cambodia does not expressly recognize a constitutional right to a healthy environment, it does constitutionally recognize children’s rights,\(^{70}\) including those stipulated in the CRC.\(^{71}\) This is relevant given the growing appreciation that the CRC offers a strong basis to reinforce approaches to children’s environment-related rights.\(^{72}\)

All of the Review Countries are parties to the CRC

3.3 All of the Review Countries have adopted the CRC,\(^{73}\) which is significant in light of the CRC’s strong environmental dimensions and ability to promote a connection between children’s rights and the environment, as detailed at 2.3 and Figure 1 above.

Only one of the Review Countries has ratified the CRC Optional Protocol on a communications procedure

3.4 As at the date of this publication, only Mongolia has ratified the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*,\(^{74}\) which allows the Committee on the Rights of the Child to hear complaints from children, groups of children, or their representatives, that claim a violation by the State of children’s rights under the CRC.

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\(^{65}\) See Analysis Matrices from page 47 of this Paper.


\(^{67}\) See Analysis Matrices from page 47 of this Paper.

\(^{68}\) Constitution of the Republic of Fiji 2013 art 40(1) states: “Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.”

\(^{69}\) Constitution of the Socialist Republic of Viet Nam art 63(1) states: “The State has a policy to protect the environment; to manage and effectively and stably use natural resources; to protect nature and biodiversity; to take initiative in prevention and resistance against natural calamities and respond to climate change”.


\(^{71}\) Ibid art 48(1).

\(^{72}\) See, Thoko Kaine, ‘Children’s Rights and the Environment’ in Kilkeary, Ursula and Liefaard, Ton (eds) *International Human Rights of Children* (Springer, 2019) 563. See also para 2.3 and Figure 1 of this Paper.

\(^{73}\) See Analysis Matrices from page 47 of this Paper. Cambodia acceded to the CRC in 1992; Fiji ratified in 1993; Indonesia ratified in 1990; Mongolia ratified in 1990; and, Viet Nam ratified in 1990.

ASEAN Review Countries have adopted the ASEAN Human Rights Declaration

3.5 ASEAN member States Cambodia, Indonesia and Viet Nam have adopted the non-binding ASEAN Human Rights Declaration, which expressly recognises a right to a safe, clean and sustainable environment,\(^75\) although this right is not specifically directed at children. The declaration also recognises a right to safe drinking water and sanitation,\(^76\) as well as a right to development that equitably meets the environmental needs of present and future generations,\(^77\) via development programmes aimed at environmental protection and sustainability.\(^78\)

Most Review Countries recognise the right to a healthy environment in national legislation but explicit links to children’s right to a healthy environment are limited

3.6 Indonesia, Mongolia and Viet Nam expressly recognise a right to a healthy environment in their national legislation.\(^79\) Of these countries, it is only Viet Nam that creates an express connection between children’s rights and environmental protection, by requiring environmental protection to be in harmony with the protection of children’s rights.\(^80\)

3.7 Where the right to a healthy environment is expressed as a right for all citizens at a constitutional or legislative level without any child-specific references, the effect of such expression should be to protect the right to a healthy environment in respect of children. The risk however is that child-specific issues might not be adequately considered.

Most Review Countries address most of the substantive elements of the right of the child to a healthy environment in national law and policy

3.8 The Review Countries, with the possible exception of Cambodia, have legislation or policy in place that directly or indirectly addresses, to a greater or lesser extent, most of the substantive elements of the right of the child to a healthy environment. Figure 4 above displays a gap analysis drawn from the Analysis Matrices and demonstrates an assessment of the law and policy of Review Countries against the substantive elements of the right of the child to a healthy environment.

3.9 Cambodia had more gaps in Figure 4 than other Review Countries, with no law or policy responding to more than half of the categories that indicate substantive elements of the right of the child to a healthy environment.\(^81\) None of the Review Countries expressed a clear legal position on the responsibility of businesses to respect children’s right to a healthy environment.\(^82\) It is notable that in each Review Country there were a variety of legal instruments (typically aimed at child protection, human rights or environmental

\(^75\) ASEAN Human Rights Declaration 2012 art 28(f).
\(^76\) Ibid art 28(e).
\(^77\) Ibid art 35.
\(^78\) Ibid art 36.
\(^79\) Law No.32 of 2009 on the Protection and Management of the Environment (Indonesia) art 65(1); Law No.39 of 1999 on Human Rights (Indonesia) art 9(3); Environmental Protection Law 1995 (Mongolia) arts 1, 4; Law on Environmental Protection No.55/2014 (Viet Nam) art 4. See Analysis Matrices from page 47 of this Paper for a full break down. See Human Rights Council (n 66) annex V for further information on other countries in the Region.
\(^80\) Law on Environmental Protection No.55/2014 (Viet Nam) art 4(2) states: “Environmental protection must harmonize with the economic growth, social security, assurance about the children’s right, promotion of gender equality, development and conservation of biodiversity, response to climate changes, in order to ensure the human right to live in a pure environment.”
\(^81\) This observation is of course subject to the limitations of this study, as outlined at paras 1.7 – 1.8 of this Paper.
matters) that addressed different substantive elements of children’s right to a healthy environment, rather than a singular unified source of law.  

3.10 More recent national environmental and disaster management law, policy and development plans indicate an increased trend towards incorporating consideration of children and current and future generations. For example:

(a) Fiji expressly considers children in the implementation of its NAP under the UNFCCC and adopts a gender and human rights based approach to climate change adaptation planning, with relatively progressive references to girls. Further, its National Disaster Risk Reduction Policy 2018–2030 is guided by a human rights and gender-based approach that recognises children and youth as agents of change who should be given the space and modalities to contribute to disaster risk reduction.

(b) Indonesia expressly refers to the interests of current and future generations in its Prevention and Eradication of Forest Destruction Law as well as the older Environmental Protection and Management Law.

(c) Viet Nam stipulates in its Law on Environmental Protection that environmental protection must harmonise with a number of economic, social and environmental issues, including the protection of the rights of the child.

All of the Review Countries inconsistently implement and enforce national law and policy relating to children’s right to a healthy environment

3.11 Despite progress in recognising children’s right to a healthy environment in national legal instruments, the research conducted for this Paper indicates that the reality on the ground is one of inconsistent implementation and enforcement across all of the Review Countries. Constraints in human, technical and financial resources, as well as a lack of adequate capacity at a policymaking or implementation level, are reported in all Review Countries as an impediment to effective implementation of existing laws that directly or indirectly protect children’s right to a healthy environment.

3.12 Examples of other challenges to implementation and enforcement in the Review Countries include:

(a) Gaps between national environmental law and local implementation. In Indonesia, reports indicate that such gaps may result from a decentralised system of governance, where many provinces relax or bypass national standards.

(b) Unpredictable and insufficient enforcement and monitoring of national environmental laws. In his mission to Mongolia, the former UNSR HRE documented repeated failures of effective implementation of environmental laws.
a lack of enforcement for illegal dumping of coal ash and untreated sewage, and frequent duplication of data across environmental impact assessments without due consideration of specific geographical factors, despite progressive environmental impact assessment regulations.

(c) Missing subsidiary legislation to enable and implement existing legal frameworks, as reported by the UNSR HRE in Mongolia.

(d) Inadequate protection of individuals and organisations that act to promote or protect children’s right to a healthy environment. The former UN Special Rapporteur on the Situation of Human Rights Defenders (UNSR HRD) recently expressed concerns around the protection of human rights defenders in Mongolia, including environmentalists and child rights defenders. Similar concerns have been reported in relation to the protection of environmental activists in Cambodia, Indonesia and Viet Nam.

To meet their duty to respect, protect and fulfil children’s right to a healthy environment, countries must be able to enforce their existing laws that directly or indirectly protect that right. Many powerful rights that have been enacted in law and policy by the Review Countries are being lost at the implementation level through low levels of monitoring or enforcement.

Access to justice and effective remedies

This study has not considered children’s practical access to justice nor the effectiveness of any remedies for a breach of their right to a healthy environment in any of the Review Countries. This topic is therefore proposed as a priority issue for further consideration.

In some Review Countries there are notable examples of laws that afford individuals rights of access to justice, rights to report a breach of their rights to specialised national institutions or a right to sue for a breach of their environmental rights. For example:

(a) In Fiji, the Human Rights and Anti-Discrimination Commission has the power to invite and receive representations from any member of the public on any matter affecting human rights. This mandate appears broad enough to include matters relating to children’s rights, including children’s right to a healthy environment.

(b) In Indonesia, every person is afforded a right of access to justice to specifically fulfil their right to a healthy environment, as well as the right to report harm from environmental pollution or damage. The Supreme Court of Indonesia also

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93 Ibid.
94 Ibid 7 [29].
95 Ibid. For example, the Law on Water Pollution Fees established fees for discharging wastewater in 2012, but the requisite subsidiary legislation to enable this mechanism had not been enacted as at mid-2017.
100 Human Rights and Anti-Discrimination Commission Act 2009 (Fiji) s 12(b).
101 Environmental Protection and Management Law No. 32/2009 (Indonesia) art 65(2), 65(5).
requires all environmental cases to be heard by judges with specialised knowledge of environmental matters.  

(c) In Mongolia, child protection legislation affords every child the right to directly complain to national child protection institutions where there is an alleged violation of their rights. In environmental protection legislation, individuals also have standing to sue for compensation for environmental damage, e.g. where a breach of forest protection legislation causes damage to their health or property.

3.16 Notably, children often do not possess legal standing to bring a claim before national courts. As such, where national law establishes legal standing for individuals to sue for a breach of their environmental rights, this is unlikely to extend to children in their personal capacity.

Priority issues for further consideration

3.17 Issues to consider at a national level across the Region include:

(a) Whether children’s right to a healthy environment has been recognised in national law. Where States have already recognised a right to a healthy environment, whether that right adequately recognises child-specific concerns.

(b) Whether States should conduct audits of national law that currently address substantive and procedural elements of children’s right to a healthy environment, to assess how comprehensively the right is protected, implemented and where gaps remain.

(c) What remedies are available to children at a national level if their right to a healthy environment is breached and whether such remedies are effective.

(d) Whether children’s right to a healthy environment should be recognised at a regional level.

(e) Ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure for States that are not yet parties.

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103 Law on the Rights of the Child 1996 (Mongolia) art XXIV.

104 Law on Forests 2012 (Mongolia) art 20.1.1.


Part II
Children’s education, engagement and participation in environmental affairs
Children’s education, engagement and participation in environmental affairs

All of the Review Countries have educational and procedural duties in relation to children's right to a healthy environment

4.1 As outlined in the Framework Principles on Human Rights and the Environment, the obligations of States in relation to the environment include duties relating to education and public awareness, freedom of expression, association and peaceful assembly, public access to environmental information, and participation in environmental decision-making. The former UNSR HRE details how fulfilling these obligations ensures that children “have agency to influence environmental policy and protect themselves from environmental harm.”

All of the Review Countries are parties to the Paris Agreement

4.2 All of the Review Countries are parties to the Paris Agreement such that they have accepted obligations to cooperate in taking measures to enhance climate change education, training, public awareness, public participation and public access to information. Consistent with their commitment to the Paris Agreement, States can be expected to take steps to progress such measures as they relate to children’s right to a healthy environment.

4.3 While these obligations under the Paris Agreement are not specific to children, they are applicable to children. The preamble to the Paris Agreement requires State parties to “respect, promote and consider their respective obligations” in relation to the rights of “children” when taking action to address climate change, which applies to the interpretation of the operative provisions of the Paris Agreement. Further, while climate change is not indicative of the whole host of environmental factors that impact children’s rights, climate change is well recognised as a threat to the full enjoyment of human rights, including children’s rights.

ASEAN Review Countries recently participated in the ASEAN Dialogue on the UN Convention on the Rights of the Child General Comments

4.4 ASEAN member States Cambodia, Indonesia and Viet Nam recently participated in a dialogue on General Comments of the Committee on the Rights of the Child, through the ASEAN Intergovernmental Commission on Human Rights (AICHR). The dialogue sought to share best practices, identify regional and international trends in advancing the rights of the child, and particularly focused on General Comment 12 on the right of the child to be heard and General Comment 14 on the right of the child to have their best interests taken into account.
as a primary consideration. Recommendations arising from the dialogue will provide inputs into national and regional policy, and include a recommendation to reinforce efforts to educate children about their rights.

Examples of children and youth expressing their views on environmental affairs can be found across all Review Countries

4.5 All of the Review Countries are parties to the CRC, which recognises that children who are capable of forming their own views should have the right to express their views freely on all matters that affect them, and that such views should be considered.

4.6 Examples were found in all Review Countries of children and youth expressing their views on environmental affairs via organisations, events, and initiatives that were led by or focussed on the active engagement and participation of children and youth. There were particularly clear and accessible examples of children and youth expressing their views on the subject of climate change. Examples include:

(a) In Cambodia, the student and rural youth organisation Cambodian Youth Network works to “increase youth participation and civic engagement in Cambodia to promote children’s rights, natural resource and environmental rights, and human rights” and has been active in calling for national environmental reforms.

(b) In Fiji, Project Survival Pacific is a youth-led movement that lobbies, raises awareness, and educates communities on climate change and sustainable development. The Fiji YouthSpeak Forum 2018 brought together youth leaders to discuss and determine action aligned with SDGs 13 and 14 to fight climate change and to sustain life below water. Individual activists 12-year-old Timoci Naulusala and 10-year-old Shalvi Shakshi advocated for urgent climate action at the UNFCCC COP23. Naulusala subsequently advocated for the same at the inaugural UN Youth Climate Summit, in 2019.

(c) In Indonesia, children and youth protested in the student-led Global Climate Strike in Jakarta, in advance of the UN Climate Action Summit 2019. Nominated youth

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116 Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013).

117 See para 1.3 above.


119 See generally Cambodia Youth Network <www.cyncambodia.org/about-us/>.


leaders participated in and advocated for climate action in the UN Youth Climate Summit in 2019. The student-founded organisation KOPHI organises events, campaigns and conservation activities aimed at engaging Indonesian children and youth in environmental issues and sustainable development.

(d) In Mongolia, 14-year-old Nomundari is a climate activist who has advocated for action against air pollution and climate change at the UN and has coordinated climate change demonstrations in Mongolia. Primary school children at ISU Ecovengers work with community advocates and local and international organisations on issues arising in the local and global environment.

(e) In Viet Nam, children, youth and parents participated in global climate strikes from Ho Chi Minh City, which was initiated by Vietnamese youth Huyen Phan. In 2018, youth groups organised flash mobs to demand action on climate change. Students and youth at the Viet Nam Climate Leadership Camp organised by 350.org undertook training on how to design strategic climate change campaigns, mobilise resources, and conduct communications and advocacy.

4.7 It is difficult to assess the extent to which the expression of views by children and youth is subsequently considered by relevant decision-makers across the Review Countries. Further, it was challenging to locate examples of children and youth expressing their views on environmental matters in Review Countries such as Mongolia and Viet Nam. It is unclear whether this was a result of lower levels of engagement and participation, or other factors that might contribute to fewer documented examples.

Children and youth are also trivialised, dismissed or obstructed in their attempts to express their views on environmental affairs

4.8 While examples of children and youth expressing their views on environmental affairs were found across all Review Countries, the mission of the former UNSR HRD in Mongolia highlights that children and youth still experience being dismissed or trivialised by adults and authorities when trying to address matters that affect their rights – including the quality of their education or issues relating to climate change. For example, the former UNSR HRD reports that children in Mongolia were unable to organise a ‘Fridays for Future’ demonstration to campaign for human rights and against climate change, as the Governor of Ulaanbaatar city was not forthcoming with the detail needed to approve a demonstration under local legislation.

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128 See generally, Koalis Pemuda Hijau Indonesia (KOPHI) <http://kophi.or.id/.
135 Ibid.
Practices that promote child and youth engagement and participation in environmental affairs are found in all Review Countries

4.9 Various strategies, initiatives and other practices to support child and youth engagement and participation in environmental affairs were found across the Review Countries. For example:

(a) In Cambodia, the Impact Hub in Phnom Penh aims to empower youth and start-ups to solve social and environmental problems through entrepreneurship and leadership. The Impact Hub’s programmes, including Youth Eco Labs and SmartSpark, support young people with innovative ideas to tackle issues relating to the environment and sustainable development.

(b) In Indonesia, the eco-schools project run by the Indonesia Green Action Forum teaches children and adolescents in the early stages of education about current environmental issues in Indonesia and strategies to combat those issues. An indigenous school network, coordinated by the Indigenous People’s Alliance of the Archipelago, facilitates afternoon learning clubs on cultural traditions, including indigenous conservation practices.

Most of the Review Countries recognise participatory rights of children and youth in environmental decision-making

4.10 The Committee on the Rights of the Child identifies the right of children to be heard and taken seriously as one of the fundamental values of the CRC. The UNSR HRE also outlines the importance of children contributing their perspectives and experiences in respect of environmental harm.

4.11 Legislation or policy in all of the Review Countries except Cambodia recognises the rights of children and youth to participate in decision-making, which is pertinent to children’s right to be heard and taken seriously with respect to their right to a healthy environment. For example:

(a) In Fiji, youth leaders appointed to the National Youth Council of Fiji have partnered with the Government of Fiji to participate in policymaking processes for children and youth, address youth development issues, and to build the capacity of all youth services in Fiji.

(b) In Indonesia, every person is entitled to participate in environmental decisions to fulfil their right to a healthy environment. Communities also possess the right to actively participate in environmental protection and management, including

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137 See Impact Hub Phnom Penh, SmartSpark (Social Welfare) <https://phnompenh.impacthub.net/smartspark/>.
141 UNSR HRE Report (n 3).
143 Environmental Protection and Management Law No 32/ 2009 (Indonesia) art 65(2).
through making suggestions, complaints or reports to relevant decision-makers.\textsuperscript{144} Notably these rights do not appear to consider child-specific concerns.

(c) In Viet Nam, the \textit{Law on Children} recognises the rights of children to participate in the formulation and implementation of policies, legal documents and development plans as they relate to children.\textsuperscript{145} Further, in 2015 the Prime Minister issued a decision aimed at promoting children’s right to participate in the development of legal instruments.\textsuperscript{146} The Ministry of Labour, Invalids and Social Affairs has also recently been engaged in creating and organising children’s forums to facilitate the collection of children’s opinions on issues about or relating to children.\textsuperscript{147}

4.12 This study did not consider the extent to which the inputs of children in decision-making for environmental matters were actually considered. This topic is therefore proposed as a priority issue for further consideration.

Environmental human rights defenders should be protected from reprisals across all Review Countries

4.13 The existence of a law recognising children’s rights to participate in environmental decision-making or to express their views on environmental affairs is no guarantee of effectiveness where there is inadequate protection from reprisals. As mentioned at 3.12(d) above, there are concerns about inadequate protection for individuals and organisations that act to promote or protect children’s right to a healthy environment across the Review Countries.

4.14 The UNSR HRD has expressed concerns around the protection of human rights defenders in Mongolia, including environmentalists and child rights defenders who have been subject to intimidation, discrimination, and stigmatisation, with some dying in circumstances that are still to be properly investigated.\textsuperscript{148} Similar concerns have been reported in relation to the protection of environmental activists in Cambodia,\textsuperscript{149} Indonesia\textsuperscript{150} and Viet Nam.\textsuperscript{151}

Most of the Review Countries recognise rights to environmental education in legislation or policy

4.15 All of the Review Countries except Cambodia recognise rights to environmental education through legislation or policy. These rights are typically directed at children rather than the general public. For example:

(a) In Fiji, thematic issues of climate change and the environment are incorporated into the national curriculum\textsuperscript{152} by way of a national climate change policy,\textsuperscript{153} which

\textsuperscript{144} Ibid art 70.
\textsuperscript{145} \textit{Law on Children}, Law No. 102/2016/QH13 (Vietnam) art 74.
\textsuperscript{146} Decision 1235/QD-TTg, 3 November 2015. The Decision, in approving the programme to promote child participation during 2016-2020, sets the following targets: (i) all laws and policies related to children at central level must involve the participation of children, and (ii) 90% of decisions made by schools must ensure children are consulted and 90% of decisions made by communities should involve child consultations.
\textsuperscript{148} Michel Forst (UN Special Rapporteur on the Situation of Human Rights Defenders), \textit{Mongolia: UN expert warns against setbacks in rule of law and shrinking space for civil society} (UN OHCHR, 13 May 2019), [https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24604&LangID=E].
\textsuperscript{153} Republic of Fiji National Climate Change Policy 2018-2030.
recognises that “Fiji’s education system must deliver the tools required for an intergenerational response to climate change”, and to ensure that national education supports long term capacity building and employment transitions to a “climate ready workforce”.

(b) Mongolia’s environmental protection legislation recognises a duty to ensure that national educational systems include environmental protection and ecological training and that environmental protection courses and skills are targeted at children at pre-school and secondary school institutions. In its national sustainable development plan Mongolia also aims to educate all citizens on coping with climate change.

(c) In Viet Nam, environmental protection legislation requires the national curriculum to convey environmental content. Through its sustainable development strategy, Viet Nam aims to accelerate public awareness of sustainable development and the protection of the environment by integrating these thematic issues into the national curriculum. Students are also expected to participate in “environmental protection activities suitable to their age groups, health and ability”. In May 2019, the Viet Nam Ministry of Natural Resources and Environment and Ministry of Education and Training signed a joint programme to improve environmental protection education, training, and awareness raising.

4.16 While Cambodia does not appear to recognise children’s right to an environmental education in legislation or policy, its government ministries are collaborating to promote environmental education. For example, in June 2018 the Ministry of Environment requested that the Ministry of Education incorporate environmental issues into the national school curriculum. It is unclear if these requests were implemented.

4.17 Notably, child and youth delegates from across the Region called for greater integration of environmental education in national curriculums at the second CERI expert consultation.

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154 Ibid, 17 fn 1.
155 Ibid, 72.
156 Environmental Protection Law 1995 (Mongolia) art 36(1).
159 Law on Environmental Protection 2014 (Viet Nam) art 155(1).
160 Decision No. 432/QD-TTg (12 April 2012) (Viet Nam); adopting Viet Nam Sustainable Development Strategy for 2011-2020.
161 Ibid [II.3].
162 Law on Education No. 38/2005/QH11 (Viet Nam) art 85(3).
All of the Review Countries recognise public rights of access to environmental information yet practical accessibility for children remains a challenge

4.18 Rights of public access to environmental information are recognised to some degree across each of the Review Countries.\(^{166}\) For example:

(a) In Fiji, there are significant constitutional and legislative avenues to access environmental information.\(^{167}\) It is unclear, however, whether children can easily access such information in practice. In the context of climate change, Fiji recognises that barriers to accessing information remain, due to insufficient availability of relevant data and the need to improve how information is communicated to local-level stakeholders.\(^{168}\) One approach taken by Fiji has been to collaborate with other Pacific island nations to create a network of national environmental data portals, which is used for environmental monitoring, evaluation, forecasting and reporting.\(^{169}\)

(b) In Mongolia, the Ministry of Environment and Tourism hosts an extensive website which provides public access to national environmental data, including databases on forest management, air pollution, special protected areas and environmental laws.\(^{170}\) However, it is unclear whether the data on this website is frequently updated to keep stakeholders informed of recent developments.

(c) In Viet Nam, the Ministry of Natural Resources and the Environment is responsible for collecting and maintaining environmental information in a national database,\(^{171}\) which must be adequately updated to meet public interest and environmental protection needs.\(^{172}\) Certain environmental impact assessments, details of emission sources, treatment of waste, and areas suffering from particularly serious pollution, environmental degradation or at risk of environmental incidents must be published in a publicly accessible way.\(^{173}\)

4.19 There remain challenges to the practical accessibility of updated environmental information, especially for children. The recent launch of RightsApp\(^ {174}\) in Viet Nam, a mobile app that allows users to search international human rights treaties and declarations by topic in Vietnamese,\(^ {175}\) may offer a helpful precedent to facilitate access to environmental information and law, as well as other elements of children’s right to a healthy environment.

\(^{166}\) See Figure 4 above and Analysis Matrices from page 47 of this Paper.

\(^{167}\) See, eg, Constitution of the Republic of Fiji (Fiji) art 25; Information Act 2018 (Fiji) ss 5-6; Environment Management Act 2005 (Fiji) ss 10, 17, 22, 34; Environment Management Regulations (Fiji) reg 30; Climate Action Trust Fund Act (COP 23 Presidency Trust Fund Act 2017) (Fiji) s 8; Natural Disaster Management Act 1998 (Fiji) ss 5, 8, 18 and 21.


\(^{170}\) Law on Environmental Protection 2014, No. 55/2014/QH13 (Viet Nam) art 129(1).

\(^{171}\) Ibid art 128(2).

\(^{172}\) Ibid art 131.

\(^{173}\) RightsApp is the product of a partnership between the Australian Human Rights Commission, legal research company LexisNexis, and the Ho Chi Minh Academy of Politics.

Priority issues for further consideration

4.20 Issues to consider at a national level across the Region include:

(a) Whether there is sufficient public awareness, understanding and protection of human and children's rights defenders and environmentalists.

(b) The role of children and youth in disseminating environmental education and best practice amongst their communities.

(c) Whether the content of national environmental education curriculums is sufficient to educate children on their environmental rights.

(d) The use of social media platforms or online apps to facilitate environmental education or access to environmental information, e.g. RightsApp.\(^\text{176}\)

(e) The extent to which children’s views and participation in decision-making on environmental matters are considered.

(f) Identifying which ministries are mandated to collect, update and disseminate environmental information.

(g) Whether national human rights institutions can be enlisted to promote awareness of children’s right to a healthy environment.

\(^{176}\) See para 4.19 above.
Part III

Children’s right to a healthy environment and the role of the business sector
Children’s right to a healthy environment and the role of the business sector

The business sector has a responsibility to respect children’s right to a healthy environment

5.1 It is well recognised that businesses have a responsibility to respect children’s rights, as well as human rights in general. Children’s experiences differ to those of adults when their rights are adversely affected by the operations and activities of business enterprises. For example, children are often politically voiceless, it is typically difficult for children to secure remedies through the courts or other mechanisms, and childhood is a unique state of development such that a breach of children’s rights can have enduring lifelong consequences. Therefore, any consideration of the adverse impact of business activities on children’s rights requires an appreciation of child-specific concerns. The Children’s Rights and Business Principles provide a framework for understanding and addressing the impact of business on the rights and well-being of children, and expressly recognise that all businesses should respect and support children’s rights in relation to the environment.

Only one of the Review Countries participated in recent negotiations on a draft multilateral treaty on business activities and human rights

5.2 In light of the growing recognition of the impact that business activities can have on human rights, the international community is developing a treaty to regulate this activity. In 2014, the Human Rights Council established an open-ended intergovernmental working group (OEIGWG) on transnational corporations and other business enterprises, with a mandate to “elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises”.

The latest OEIGWG session in 2019 involved substantive intergovernmental negotiations on a revised draft treaty. The current draft protects and promotes children’s right to a healthy environment through express recognition of the heightened risks of business-related human rights violations in relation to children, and by defining “human rights violations or abuse” to include the violation of environmental rights by a State or business enterprise.

Of the Review Countries, only Indonesia participated in the recent revised draft treaty negotiations.

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177 See 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); UNSR HRE Report (n 3) [62].
179 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) [I].
180 Ibid.
181 Children’s Rights and Business Principles (2012) <https://www.unglobalcompact.org/library/63>. These principles were developed by Save the Children, the United Nations Global Compact and UNICEF.
182 Ibid 2.
185 Human Rights Council, Report on the fifth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, 43rd sess, Agenda Item 3, UN Doc A/HRC/43/55 (9 January 2020);
187 Ibid art 1(2).
188 Ibid annex I.
ASEAN Review Countries are building recognition of the link between business sector activities and children’s rights and the environment


None of the Review Countries have published a National Action Plan on business and human rights (NAP BHR) and only two Review Countries are developing one


5.6 A NAP BHR provides an opportunity for countries to reinforce their policy position on respecting, protecting and fulfilling children’s right to a healthy environment, while providing the business sector with clear guidance on expectations where business activities have the potential to impact children’s right to a healthy environment.

5.7 None of the Review Countries have published a formal NAP BHR, although Indonesia published a recommended NAP BHR in 2017. Only two Review Countries are in the process of developing a formal NAP BHR, as follows:

(a) In Indonesia, the government established a focus group in 2019 to develop a formal NAP BHR.\footnote{See United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” framework (2011).} In 2017, the National Commission on Human Rights (Komnas HAM) and civil society organisation Institute for Policy Research and Advocacy (ELSAM) launched a recommended NAP BHR,\footnote{Komnas HAM and ELSAM, National Action Plan on Business and Human Rights (May 2017) <https://globalnaps.org/country/indonesia/>.} making Indonesia the first country in the region to initiate a NAP BHR process via its national human rights institution.\footnote{United Nations, UN Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights (2016) <https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf>}. This recommended NAP BHR was developed through extensive consultation with stakeholders across government, business and civil society, including children’s rights groups. Notably, it highlights the special attention that should be paid to children and details the international and national legal basis for doing so. It is unclear how the recommended NAP BHR is informing

the current development of a formal NAP BHR, although Indonesia recently confirmed in the Asia Session at the 2019 UN Forum on Business and Human Rights that the protection of the rights of children comprises one of the four priority areas for the development of the formal NAP BHR.\textsuperscript{196} In the interim, the recommended NAP BHR will guide how Komnas HAM addresses business-related human rights complaints.\textsuperscript{197} Komnas HAM has also committed to working with the government to develop the recommended NAP BHR into national law.\textsuperscript{198}

(b) In Mongolia, a multi-stakeholder working group was established in 2019 to formulate a NAP BHR,\textsuperscript{199} which is expected to be published by early 2021.\textsuperscript{200} It is unclear the extent to which that NAP BHR will address child-specific or environmental concerns.

None of the Review Countries clearly reference key international standards on the impacts of business activity on children’s rights in national law or policy, but other measures do exist

5.8 The former UNSR HRE outlines that respecting the right of the child to be free from environmental harm requires businesses to comply with the UNGPs, \textit{Children’s Rights and Business Principles} and the recommendations of the Committee on the Rights of the Child in its General Comment 16.\textsuperscript{201} We were unable to identify any clear reference to these standards in the binding law or policy of any of the Review Countries, as indicated in the gap analysis at Figure 4.

5.9 However, other measures and initiatives exist across the Review Countries to promote awareness of international standards addressing the risk of adverse children’s rights impacts from business activity. For example, Indonesia’s recommended NAP BHR references each of the international standards discussed at 5.8 above.

5.10 Further, IGO partnerships with the public and private sector in many of the Review Countries are raising awareness of these international standards. For example, in Mongolia, UNICEF has partnered with business platforms, NGOs and key industries to provide capacity building and technical assistance on implementing the \textit{Children’s Rights and Business Principles}. UNICEF has also provided technical inputs to develop a Model Community Development Agreement with the Mongolian Ministry of Mining, to ensure that children’s rights are appropriately considered in mining developments.\textsuperscript{202}

Clear examples of regulating business to ensure protection from environmental harm were identified in most Review Countries

5.11 Recognising that States typically seek to minimise the risk of adverse impacts from business activities through a variety of legislative and regulatory measures, there are existing laws across the Review Countries that directly and indirectly regulate business respect for

\begin{footnotesize}
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\item[\textsuperscript{197}] Komnas HAM Regulation No. 1 of the year 2017 on Ratification of the National Plan of Action on Business and Human Rights (Indonesia) art 2.
\item[\textsuperscript{198}] Ibid.
\item[\textsuperscript{200}] National Action Plans on Business and Human Rights, Mongolia <https://globalnaps.org/country/mongolia/>.
\item[\textsuperscript{201}] Committee on the Rights of the Child, \textit{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).
\end{itemize}
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children’s right to a healthy environment by ensuring protection from environmental harm. While a full assessment of these laws was beyond the scope of this study, clear examples are identified in Indonesia and Mongolia:

(a) In Indonesia, under the Environmental Protection and Management Law, businesses are required to undertake an environmental risk analysis for any activity that may substantially impact the environment or human health and safety, and must also undertake periodical environmental audits. There is no express requirement to consider child-specific concerns in this legal regime.

(b) In Mongolia, the Law on Environmental Impact Assessments and the Environmental Protection Law establish comprehensive regulations for the business sector to undertake environmental impact assessments to minimise and mitigate any adverse effects to human health and the environment. Public participation requirements mean that local communities affected by a proposed project must be consulted, although consideration of child-specific concerns are not expressly identified in this regime.

Inconsistent implementation, monitoring and enforcement of national law and policy undermines the regulation of business activities impacting children’s right to a healthy environment

5.12 While core legal frameworks to regulate business and human rights such as NAP BHRs are being developed by some Review Countries, inconsistent implementation and enforcement of existing legal frameworks across the Review Countries undermines the regulation of business respect for children’s right to a healthy environment.

5.13 For example, while Mongolia has enacted detailed environmental protection and environmental impact assessment laws that regulate business activities, the UNSR HRE reports repeated failures to implement, monitor and enforce these laws. Examples include: (i) unregulated water pollution from mining and incidences of untreated sewage being discharged into the Tuul River around Ulaanbaatar; (ii) environmental impact assessment reports submitted by project proponents being “cut-and-pasted” from other reports, such that factors specific to the project remained unconsidered; and, (iii) while Mongolia’s legal framework requires business entities in the natural resource sector to undertake an environmental audit every two years, only one staff member from the Ministry of Environment and Tourism supervises the environmental audits and limited sanctions are enforced for non-compliance. Consequently, these audits frequently result from voluntary action by businesses and investor pressure, rather than the legal obligation.

5.14 As discussed at 2.19 above, the reasons for such inconsistency are complex. Relevant factors include:

(a) Institutional and financial constraints, including insufficient technical capacity at a policymaking and implementation level, as well as poor coordination between

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203 Environmental Protection and Management Law No.32/2009 (Indonesia) arts 47 – 49.
204 Law on Environmental Impact Assessments 2012 (Mongolia).
205 Environmental Protection Law 1995 (Mongolia).
208 Ibid [28].
209 Ibid [29].
210 Ibid [31].
government ministries that have mandates relating to children’s rights, environmental protection and business regulation.

(b) **Low levels of awareness or prioritising of the business sector’s responsibility to respect children’s right to a healthy environment** (and children’s rights in general), as evidenced by the lack of clear policy on the issue.

(c) **Challenges in balancing economic priorities against environmental protection priorities.** For example, the World Bank observes that Viet Nam and Cambodia have experienced economic booms largely at the expense of their natural resources.\(^{211}\)

(d) **Corruption** creates a greater challenge for the effective implementation and enforcement of laws regulating business activities. Cambodia and Mongolia rank the lowest of the Review Countries in the Transparency International Corruption Perception Index 2019, at 162 and 106 respectively.\(^{212}\)

(e) **The limited influence of government agencies with environmental or child rights portfolios** to promote agendas that support rights protection and enforcement where they conflict with more powerful government agencies, as seen in Fiji with respect to government agencies with environmental portfolios.\(^{213}\)

5.15 To meet their duty to respect, protect and fulfil children’s right to a healthy environment, governments must be able to enforce their existing laws that directly or indirectly protect that right. This includes the regulation of businesses to promote respect for children’s right to a healthy environment.

None of the Review Countries require ‘child-rights impact assessments’ for proposed projects or policies

5.16 The former UNSR HRE outlines how States should require a ‘child-rights impact assessment’ for proposed projects and policies, to ensure that corollary environmental impacts do not interfere with the full enjoyment of children’s rights.\(^{214}\) While Review Countries such as Indonesia and Mongolia clearly possess a detailed legal framework for environmental impact assessments, requirements to appreciate child-specific concerns through a ‘child-rights impact assessment’ were not located in binding law or policy in any of the Review Countries. In respect of ASEAN Review Countries however, the AICHR is reportedly exploring a regional strategy for a rights-based approach to environmental impact assessments.\(^{215}\)

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\(^{214}\) UNSR HRE Report (n 3) [46].

Priority issues for further consideration

5.17 Issues to consider at a national level across the Region include:

(a) Whether countries have published or are developing a NAP BHR. Where countries are developing a NAP, whether there is recognition of child-specific concerns, the *Children’s Rights and Business Principles* (especially Principles 3 and 7) and requirement of ‘child-rights impact assessments’.

(b) Using the process of developing a NAP BHR to audit the national law that currently implements the UNGPs, *Children’s Rights and Business Principles* and Committee of the Rights of the Child General Comment No 16.

(c) What factors should be considered in a ‘child-rights impact assessment’.

(d) Whether the business sector has sufficient guidance and support to respect children’s right to a healthy environment in their activities.

(e) Levels of awareness of the *Children’s Rights and Business Principles* across government, businesses and other relevant stakeholders.

(f) Which government agencies have a mandate relevant to regulating, monitoring, or enforcing business respect for children’s right to a healthy environment and whether collaboration exists between relevant agencies on this issue.

(g) Whether the current implementation, monitoring and enforcement of existing laws is sufficient to ensure business respect for children’s right to a healthy environment.
Conclusions and Recommendations
Conclusions and Recommendations

On the basis of the study conducted for this Paper on children’s right to a healthy environment, it is recommended that States in the Region:

**Ensure the effective implementation and enforcement of existing national law that directly or indirectly respects, protects and fulfils children’s right to a healthy environment.** As part of this commitment, States in the Region are encouraged to build upon the findings in this Paper to comprehensively audit their national law to identify the extent to which children’s right to a healthy environment is respected, protected and fulfilled by national law and where gaps remain. National human rights institutions and relevant IGOs may be able to help States in the Region to identify where their existing laws are aligned with their children’s rights obligations. Similarly, civil society organisations may be able to help identify where implementation and enforcement are lacking. States in the Region are advised to swiftly enact subsidiary legislation or regulation that is necessary to ensure the effective implementation and enforcement of relevant primary legislation. It is recommended that government agencies and ministries with a mandate to monitor and enforce relevant law are identified and encouraged to create cross-governmental links, to ensure a cohesive approach that avoids duplicated effort. States in the Region are urged to allocate specific and adequate resources, including budget, personnel, and technical capacity, to ensure that national laws pertaining to children’s right to a healthy environment are effectively implemented and enforced.

**Develop regional guiding principles on children’s right to a healthy environment** to provide practical guidance to inform and assist children, policymakers, judicial decision-makers, businesses and other relevant stakeholders with consistent implementation and enforcement of children’s right to a healthy environment. It is recommended that the development of guiding principles brings together experts on children’s right to a healthy environment, along with key stakeholders from relevant government agencies, policymakers, courts, the business sector, civil society organisations and IGOs focussed on children’s and environmental rights. It is further recommended that the development process ensures the meaningful participation of children and requires public consultation. Publication of any guiding principles should include a child-friendly version. Any guiding principles developed at a regional level should take account of and be consistent with efforts to develop normative and practical guidance on children’s right to a healthy environment at an international level, including the efforts of the CERI under the auspices of the UNSR HRE, IGOs such as the OHCHR, UNICEF and UNEP, as well as any general comment issued by the Committee on the Rights of the Child on this topic. Further, it is strongly advised that any guiding principles are informed by the obligation of non-discrimination under the CRC, to ensure that the rights of children most vulnerable to environmental harm are adequately considered.
Raise public awareness of the nexus between children’s rights and the environment at a regional and national level. States in the Region are encouraged to identify which ministries are responsible for collecting, updating and disseminating environmental information and to allocate sufficient resources to those ministries to ensure that such responsibilities are effectively implemented. States in the Region are urged to raise awareness of children’s right to a healthy environment through regional forums, national government, the business sector and civil society. National human rights institutions are encouraged to adopt a multi-sectoral approach that incorporates a focus on, and raises awareness of, the nexus between environmental and children’s rights. It is recommended that public information campaigns raise awareness about the content of children’s right to a healthy environment and who the rights-holders and duty-bearers of that right are, as well as avenues to access remedies. Such public information campaigns must be practically accessible for children and easy to understand. Pregnant women and parents of young children should be a particular focus, to raise awareness about the environmental risks to unborn children and young infants. States in the Region are advised to assess whether the content of their respective national environmental education curriculums is sufficient to educate children about their environmental rights and to strengthen their capacity to respond to environmental challenges. Children’s environmental education should begin early, continue throughout the educational process, and comprise both formal and informal educational settings such as schools, at home and in the community.

Develop a National Action Plan on business and human rights (NAP BHR) which recognises key international standards and child-specific concerns. States in the Region are strongly encouraged to develop a NAP BHR and to use the development process as an opportunity to audit whether the current implementation, monitoring and enforcement of existing laws is sufficient to ensure business respect for children’s right to a healthy environment. Any gaps can then be identified and addressed. In their NAP BHR, States in the Region are strongly recommended to include a focus on the protection of children’s rights, and to commit to clear policy positions on implementing and disseminating key international standards to promote business respect for children’s right to a healthy environment; namely the UN Guiding Principles on Business and Human Rights, Children’s Rights and Business Principles (especially Principles 4 and 7) and Committee of the Rights of the Child General Comment No 16. Government agencies with a mandate relevant to promoting business respect for children’s right to a healthy environment should be clearly identified, to ensure collaboration occurs on this issue. In developing their NAP BHR, States in the Region are urged to undertake

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public consultation with a wide range of stakeholders, including children, civil society organisations focussed on children’s rights, the business sector and relevant government agencies. States in the Region are also advised to ensure that the business sector has sufficient guidance and support to respect children’s right to a healthy environment in their activities.

Integrate the consideration of children’s rights into existing environmental impact assessments for proposed projects and policies. Where environmental impact assessments form a prerequisite to implementing national policies, or infrastructure, natural resource, urban planning and other projects, States in the Region are encouraged to incorporate specific consideration of the impact of that policy or project on children’s right to a healthy environment. States in the Region are advised to also ensure that agencies and institutions responsible for conducting, monitoring and enforcing the outcome of environmental impact assessments are sufficiently informed about children’s right to a healthy environment and have access to sufficient resources and capacity to implement their responsibilities effectively.

Collaborate with neighbouring States to share best practices and formulate effective responses to transboundary environmental harm to the rights of children where they are not adequately addressed. States in the Region may seek to collaborate through existing regional mechanisms such as ASEAN, or through establishing new mechanisms that are specifically focussed on children’s right to a healthy environment.

Ensure that children and human rights defenders, including children’s rights defenders and environmentalists, are protected from reprisals. States in the Region are strongly encouraged to ensure that there is sufficient public awareness, understanding and protection of human and children’s rights defenders and environmentalists. In particular, children should be protected from reprisals for their participation in environmental decision-making or for otherwise expressing their views on environmental matters.

Request that the Committee on the Rights of the Child consider adopting a general comment on children’s right to a healthy environment. A general comment could provide authoritative clarification of the application of the CRC in relation to children’s right to a healthy environment and would assist States with implementation of their CRC obligations.

Consider becoming parties to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure to allow the Committee on the Rights of the Child to hear complaints from children, groups of children, or their representatives, where their rights under the CRC are violated. States in the Region are also encouraged to ensure that children and youth have adequate and effective access to national grievance mechanisms to secure a remedy for any breach of their right to a healthy environment.
Analysis Matrices
<table>
<thead>
<tr>
<th>ANALYSIS CATEGORIES TABLE</th>
<th>Children’s Right to a Healthy Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Air pollution&lt;sup&gt;219&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>2</strong> Water pollution&lt;sup&gt;220&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>3</strong> Climate change&lt;sup&gt;221&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>4</strong> Chemicals, toxic substances and waste&lt;sup&gt;222&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>5</strong> Loss of biodiversity and access to nature&lt;sup&gt;223&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>6</strong> Mining&lt;sup&gt;224&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>7</strong> Children’s rights to life, health and development&lt;sup&gt;225&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>8</strong> Children’s right to an adequate standard of living&lt;sup&gt;226&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>9</strong> Children’s rights to play and recreation&lt;sup&gt;227&lt;/sup&gt;</td>
<td></td>
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<tr>
<td><strong>10</strong> Children’s right to an environmental education&lt;sup&gt;228&lt;/sup&gt;</td>
<td></td>
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<tr>
<td><strong>11</strong> State obligation to collect, update and disseminate environmental information&lt;sup&gt;229&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>12</strong> Public access to environmental information&lt;sup&gt;230&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>13</strong> Children’s rights to express views and have them considered&lt;sup&gt;231&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td><strong>14</strong> Participatory rights of children on environmental matters&lt;sup&gt;232&lt;/sup&gt;</td>
<td></td>
</tr>
</tbody>
</table>


<sup>220</sup> Ibid paras 19–21.

<sup>221</sup> Ibid paras 22–26.

<sup>222</sup> Ibid paras 27–29.

<sup>223</sup> Ibid para 30.


<sup>225</sup> UNSR HRE Report (n 219) paras 32–33.

<sup>226</sup> Ibid paras 34–35.

<sup>227</sup> Ibid paras 36–37.

<sup>228</sup> Ibid paras 40–41.

<sup>229</sup> Ibid paras 42–46.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid paras 47–50.

<sup>232</sup> Ibid para 49.
<table>
<thead>
<tr>
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<th>Protection of children from reprisals for participating or expressing views on environmental matters&lt;sup&gt;233&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Effective remedies for children’s rights violation&lt;sup&gt;234&lt;/sup&gt;</td>
</tr>
<tr>
<td>17</td>
<td>Non-discrimination in children’s equal enjoyment of rights relating to a safe, clean, healthy and sustainable environment&lt;sup&gt;235&lt;/sup&gt;</td>
</tr>
<tr>
<td>18</td>
<td>State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed projects&lt;sup&gt;236&lt;/sup&gt;</td>
</tr>
<tr>
<td>19</td>
<td>State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed policies&lt;sup&gt;237&lt;/sup&gt;</td>
</tr>
<tr>
<td>20</td>
<td>Regulation of businesses (including State-owned) to protect children from environmental harm.&lt;sup&gt;238&lt;/sup&gt; Includes obligation for businesses to conduct ‘child-rights due diligence’ for actual and proposed actions on the rights of children through environmental harm.&lt;sup&gt;239&lt;/sup&gt;</td>
</tr>
<tr>
<td>21</td>
<td>Obligations on businesses to comply with the:&lt;br&gt;&lt;br&gt;(a) Guiding Principles on Business and Human Rights;&lt;br&gt;(b) Children’s Rights and Business Principles;&lt;br&gt;(c) recommendations of the Committee on the Rights of the Child in its general comment No. 16.&lt;sup&gt;240&lt;/sup&gt;</td>
</tr>
<tr>
<td>22</td>
<td>State obligation to adopt/ implement environmental standards consistent with the best available science and international health and safety standards, or on the basis of the precautionary principle&lt;sup&gt;241&lt;/sup&gt;</td>
</tr>
<tr>
<td>23</td>
<td>State obligation to cooperate with other States to address global/ transboundary harm&lt;sup&gt;242&lt;/sup&gt;</td>
</tr>
<tr>
<td>24</td>
<td>State obligation to provide access to court remedies for environmental harm by businesses in their State of incorporation as well as where the harm is alleged to occur&lt;sup&gt;243&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

<sup>233</sup> Ibid para 50.<br><sup>234</sup> Ibid paras 51–54.<br><sup>235</sup> Ibid paras 63–66.<br><sup>236</sup> Ibid para 46.<br><sup>237</sup> Ibid.<br><sup>238</sup> Ibid paras 59–62.<br><sup>239</sup> Ibid para 60.<br><sup>240</sup> Ibid, para 62.<br><sup>241</sup> Ibid para 72.<br><sup>242</sup> Ibid paras 61, 74.<br><sup>243</sup> Ibid para 75.
## I. OVERVIEW

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<td>1</td>
<td>Number of relevant national legal instruments enacted since 1989?</td>
<td>17</td>
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<tr>
<td>2</td>
<td>Number of relevant national cases since 1989?</td>
<td>N/A</td>
</tr>
<tr>
<td>3</td>
<td>References to children’s right to a healthy environment in the national constitution?</td>
<td>No</td>
</tr>
<tr>
<td>4</td>
<td>Has the country ratified the Convention on the Rights of the Child?</td>
<td>Yes</td>
</tr>
<tr>
<td>5</td>
<td>Has the country ratified the Optional Protocols on the Convention on the Rights of the Child?</td>
<td>(a) Yes, (b) Yes, (c) No</td>
</tr>
<tr>
<td>6</td>
<td>Is the country a monist or dualist state? If dualist, is there a national legal instrument enacting the Convention on the Rights of the Child into national law?</td>
<td>Predominantly dualist. The CRC has been enacted into national law by Article 48 of the Constitution. Further, a 2007 decision of the Constitutional Council found that the CRC is a law that must be enforced by Cambodian courts.</td>
</tr>
</tbody>
</table>

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244 Comprises any national constitution, legislation (primary and secondary), bills, and official policy frameworks, at state and federal/local level (if applicable) that have been located and respond to categories set out in the Analysis Categories Table.

245 See the following orange table for Cambodia. Note that the legal instruments generally contain obligations relating to the environment for the benefit of all persons (thereby including children) rather than specifically for the benefit of children.

246 A comprehensive case law review was not conducted as part of this study due to the limitations outlined at para 1.8 of this Paper. Case law is identified where it has been brought to the attention of this study via consultation with UNICEF Country Offices or through the work of the UNSR HRE pro bono legal team.


249 Ratified on 30 May 2002.


251 In monist states international treaty law is automatically incorporated into national law. In dualist states, national law must be enacted to incorporate the international treaty law at a national level.

252 The CRC has been enacted into national law by Article 48 of the Constitution. Further, a 2007 decision of the Constitutional Council found that the CRC is a law that must be enforced by Cambodian courts.

## II. NATIONAL LEGAL INSTRUMENT (CAMBODIA)

<table>
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<tr>
<th></th>
<th>Responsive to which category?</th>
<th>Official English translation available?</th>
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<tbody>
<tr>
<td><strong>Constitution</strong></td>
<td></td>
<td></td>
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</tbody>
</table>
| 1 | The Constitution of the Kingdom of Cambodia (1993) | Cat 7-8: arts 31*, 48*, 73  
Cat 1-6: art 59 | Yes – official (FAO) – [Link](#) |
| **Laws** | | |
| 9 | Sub-decree on the Control of Air Pollution and Noise Disturbance (2000) | Cat 1: whole | Yes – official (FAO) – [Link](#) |
| 11 | Sub-decree on Water Pollution Control (1999) | Cat 2: whole | Yes – official (FAO) – [Link](#) |

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254 Categories are outlined in the Analysis Categories Table on page 47 of this Paper.
|   | Law on Environmental Protection and Natural Resource Management (1996) | Cat 5: arts 6*, 7  
Cat 1-6: art 8 | Yes – official (FAO) – [Link](#) |
<table>
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<tbody>
<tr>
<td>16</td>
<td>Regulations on the Creation and Designation of Protected Areas (1993)</td>
<td>Cat 5: whole</td>
<td>Yes – official (FAO) – <a href="#">Link</a></td>
</tr>
</tbody>
</table>

**Notes**

*This legal provision responds to the category and is specific to children’s rights.*
## I. OVERVIEW

<table>
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<tr>
<td>1</td>
<td>Number of relevant national legal instruments enacted since 1989?</td>
<td>44</td>
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<tr>
<td>2</td>
<td>Number of relevant national cases since 1989?</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>References to children’s right to a healthy environment in the national constitution?</td>
<td>There is reference to a right to a healthy environment, but this right is not specific to children.</td>
</tr>
<tr>
<td>4</td>
<td>Has the country ratified the Convention on the Rights of the Child?</td>
<td>Yes</td>
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<tr>
<td>6</td>
<td>Is the country a monist or dualist state? If dualist, is there a national legal instrument enacting the Convention on the Rights of the Child into national law?</td>
<td>Fiji is a dualist state. No single national legal instrument enacts the CRC into domestic law.</td>
</tr>
</tbody>
</table>

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255 Comprises any national constitution, legislation (primary and secondary), bills, and official policy frameworks, at state and federal/local level (if applicable) that have been located and respond to categories set out in the Analysis Categories Table.

256 See the following orange table for Fiji for more details. Note that the legal instruments generally contain obligations relating to the environment for the benefit of all persons (thereby including children) rather than specifically for the benefit of children.

257 A comprehensive case law review was not conducted as part of this study due to the limitations outlined at para 1.8 of this Paper. Case law is identified where it has been brought to the attention of this study via consultation with UNICEF Country Offices or through the work of the UNSR HRE pro bono legal team.

258 Note that these cases consider environmental issues relevant to the right to a healthy environment in general, rather than a child-specific right to a healthy environment.

259 See Constitution of the Republic of Fiji 2013 (“Constitution”) art 40(1): “Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures”; Constitution art 1: “The Republic of Fiji is a sovereign democratic State founded on the values of— … (h) a prudent, efficient and sustainable relationship with nature”.

260 Ratified on 13 August 1993.


262 In monist states international treaty law is automatically incorporated into national law. In dualist states, national law must be enacted to incorporate the international treaty law at a national level.

263 Constitution art 51: “An international treaty or convention binds the State only after it has been approved by Parliament.”

264 Various national laws seek to give effect to the CRC, e.g. the Domestic Violence Act 2009 (Fiji) s 6(c) seeks to give effect to the CRC; the Mental Health Act 2010 (No. 54 of 2010) (Fiji) s 4(b) requires due regard to be given to the CRC; the Family Law Act 2003 (Fiji) s 26(e) requires courts to consider the principles of the CRC.
<table>
<thead>
<tr>
<th>II. NATIONAL LEGAL INSTRUMENT (FIJI)</th>
<th>Responsive to which category?</th>
<th>Official English translation available?</th>
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<tr>
<td><strong>Constitution</strong></td>
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<tr>
<td>1. Constitution of the Republic of Fiji (2013)</td>
<td>Cat 3: Chapter 1 art 1(h) and art 40*&lt;br&gt;Cat 4: Chapter 1 art 1(h) and art 40*&lt;br&gt;Cat 7: Chapter 2 art 41*&lt;br&gt;Cat 8: Article 41*&lt;br&gt;Cat 12: Articles 25 and 150</td>
<td>Yes – official – Link</td>
</tr>
<tr>
<td><strong>Laws</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Information Act (2018)</td>
<td>Cat 11: Section 35&lt;br&gt;Cat 12: Sections 5, 6 and 12</td>
<td>Yes – official – Link</td>
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<tr>
<td>6. Environment Levy (Budget Amendment) Act (2017)</td>
<td>Cat 3: Sections 6, 7, 8, 9, 10, 11 and 12&lt;br&gt;Cat 5: Sections 6 and 7</td>
<td>Yes – official – Link</td>
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<tr>
<td>7. Aquaculture Bill (2016)</td>
<td>Cat 2: section 5(e)&lt;br&gt;Cat 5: section 5(f)&lt;br&gt;Cat 11: section 5(g)&lt;br&gt;Cat 22: sections 5(b)-(c)</td>
<td>Yes – official – Link</td>
</tr>
<tr>
<td>8. Forest Bill (2016)</td>
<td>Cat 5: Sections 34 and 35&lt;br&gt;Cat 11: Section 5&lt;br&gt;Cat 12: Section 5(j)</td>
<td>Yes – official – Link</td>
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265 Categories are outlined in the Analysis Categories Table on page 47 of this Paper.
266 This is a draft document that is currently pending legislative approval.
267 This is a draft document that is currently pending legislative approval.
268 This is a draft document that is currently pending legislative approval.
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<tr>
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<td>Heritage Bill (2016)</td>
<td>Cat 11: Sections 6* and 7</td>
<td>Yes – official – <a href="#">Link</a></td>
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| 10 | Land and Water Resources Management Bill (2016)                             | Cat 10: Section 4(b)  
Cat 11: Section 4  
Cat 12: Section 16 | Yes – official – [Link](#) |
| 11 | International Seabed Mineral Management Act (2013)                          | Cat 2: Sections 4(c)(ii), 10(b)(iii), 49(2)(c)  
Cat 5: Section 4(c)(i)  
Cat 11: Section 9  
Cat 22: Section 34 | Yes – official – [Link](#) |
Cat 4: Sections 134, 135 and 137  
Cat 22: Section 231 | Yes – official – [Link](#) |
| 13 | Offshore Fisheries Management Act (2012)                                     | Cat 2: Section 6(f)  
Cat 4: Section 6(f)  
Cat 5: Part 4  
Cat 11: Section 6(l)  
Cat 12: Section 9(1)(g)  
Cat 22: Sections 6(b), 6(d) | Yes – official – [Link](#) |
| 14 | Child Welfare Act (2010)                                                     | Cat 7: Sections 4* and 10*  
Cat 13: Section 15*  
Cat 16: Section 10* | Yes – official – [Link](#) |
| 17 | Litter Act (2008)                                                           | Cat 4: Sections 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17 | Yes – official – [Link](#) |
| 18 | Environment Management (EIA Process) Regulations (2007)                     | Cat 1: Regulations 25(1)(e) and 25(2)  
Cat 2: Regulations 25(1)(e) and 25(2)  
Cat 11: Regulation 18  
Cat 12: Regulation 18  
Cat 12: Regulation 30 | Yes – official – [Link](#) |
| 19 | Water Authority of Fiji Act (2007)                                          | Cat 2: Section 7  
Cat 4: Sections 7(c), 7(d), 7(g) | Yes – official – [Link](#) |

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269 This is a draft document that is currently pending legislative approval.  
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<tr>
<td>20</td>
<td>Environment Management Act (2005)</td>
<td>Sections 11(1), 14, 45, 50, Part 5</td>
<td>Sections 11(1), 14, 35, 45</td>
<td>Section 3(3)</td>
<td>Section 3(3)</td>
<td>Section 13(3)(c)</td>
<td>Sections 12, 13 and 22</td>
<td>Sections 10, 17, 22 and 34</td>
<td>Section 8</td>
<td>Yes – official – <a href="#">Link</a></td>
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<td>23</td>
<td>Natural Disaster Management Act (1998)&lt;sup&gt;271&lt;/sup&gt;</td>
<td>Sections 5, 8, 9 and 11</td>
<td>Sections 5(b), 8(3)(h), 18 and 21</td>
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<td>24</td>
<td>Ozone Depleting Substances Act (1998)</td>
<td>Sections 8, 9, 10, 11, 12, 13, 14</td>
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<td>Forest Act (1992)</td>
<td>Sections 6, 7, 8, 23 and 28</td>
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**Policies, Programmes, Plans and other**

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<tr>
<td>26</td>
<td>National Climate Change Policy 2018-2030 (2019)</td>
<td>Section 3 (page 55)</td>
<td>Whole</td>
<td>Section 3 (page 50)</td>
<td>Section 3 (page 58)</td>
<td>Section 1 (page 17)*</td>
<td>Section 3 Objective 1.2, Goal 1, Points 10 and 11 (page 49)</td>
<td>Section 1 (page 31), Section 3 Objective 5.1 (page 66) and Objective 5.2 (page 68)</td>
<td>Section 1 Policy Pillars (pages 33–34)</td>
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Cat 3: Section 5.3 Focus Area 6 SUD3.2  
Cat 4: Section 5.3 Focus Area 6 SUD4  
Cat 5: Whole  
Cat 6: Section 5.0 Focus Area 2 PA2.9, Section 5.3 Focus Area 6 – SUD1, SUD3, SUD4, SUD5  
Cat 11: Section 5.0 Focus Area 1 IK1.2  
Cat 12: Section 5.0 Focus Area 1 IK1.11, Section 5.3 Focus Area 6 – SUD4.1, SUD6.9  
Cat 22: Section 1.1 Box 1.1 (page 6) | Yes – official – [Link](#) |
|---|---|---|
| 30 | 5-Year & 20-Year National Development Plan (2017) | Cat 2: Section 1.1 (page 3), section 3.1.1, 3.2.2 (pages 78 to 79)  
Cat 3: 2.6, 3.1.2, 3.2.9  
Cat 5: 3.2.13, 3.2.14  
Cat 6: 3.2.15  
Cat 7: 3.1.6*  
Cat 9: 3.1.8*  
Cat 10: 3.1.5*  
Cat 11: 3.1.1 (page 19)  
Cat 12: 2.5 (pages 15-16)  
Cat 17: 1.0  
Cat 22: Preamble and 2.6 | Yes – official – [Link](#) |
| 28 | National Child Protection Strategy (2018) (Draft)\(^{272}\) | Cat 7: Whole*  
Cat 8: Whole*  
Cat 9: Whole* | Yes – not publicly available |
Cat 14: Section 6.2 ([70] and [71]), Section 6.3 ([73]\(^{274}\) and [77])*  
Cat 15: [75], [76]*  
Cat 17: [75]* | Yes – not publicly available |
Cat 3: Whole, Section 6 (page 38 – 39)*  
Cat 5: Section 16  
Cat 7: Section 13  
Cat 17: Section 6 (page 38) | Yes – official – [Link](#) |

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\(^{272}\) This Strategy is a draft document that has been endorsed by the Permanent Secretary for the Ministry of Women, Children and Poverty Alleviation but has yet to be issued by the Government of Fiji.

\(^{273}\) This is a draft document that is in the process of finalisation and has not yet been released by the Government of Fiji.

\(^{274}\) Refers to ‘vulnerable groups’, which includes ‘young people’ (see page iii of the draft Policy).
|  | National Humanitarian Policy for Disaster Risk Management (2017) | Cat 3: Section 2.0  
Cat 11: Sections 2.0 and 3.2  
Cat 12: Sections 2.0, 3.1(f), 3.1(g) | Yes – official – [Link](#) |
|---|---|---|---|
|  | Interagency Guidelines (IAG) on Child Abuse and Neglect (2015) | Cat 7: Whole*  
Cat 8: Whole*  
Cat 16: Whole*  
Cat 24: Section on ‘Roles and Responsibilities of Agencies’, para 8 (page 14)* | Yes – not publicly available |
|  | Fiji's 2nd, 3rd and 4th Report on the Convention on the Rights of the Child (2013) | Cat 8: Section V(e)-(g) (pages 83–84)*  
Cat 13: Section IV(c) (page 40)* | Yes – official – [Link](#) |
|  | Fiji Government News Release (13 Mar 2012) | Cat 10: Paragraph 6*  
Cat 14: Paragraph 5* | Yes – official – [Link](#) |
|  | National Youth Policy (2011) | Cat 3: Section 6.8.1*  
Cat 5: Section 2.8*  
Cat 7: Section 2.4*  
Cat 9: Sections 2.3* and 6.3.1*  
Cat 14: Section 2.8* | Yes – official – [Link](#) |
|  | National Solid Waste Management Strategy 2011-2014 (undated) | Cat 4: Section 4.3  
Cat 22: Section 5.1 | Yes – official – [Link](#) |
Cat 2: Sections 3.1, 3.2, 5.2, 5.3  
Cat 3: Sections 5.2 and 5.3  
Cat 4: Sections 3.1, 3.2, 5.2 and 5.3  
Cat 5: Sections 3.1 and 5.2  
Cat 6: Section 3.1 (page 27)  
Cat 12: Section 5.3.9* | Yes – official – [Link](#) |
|  | National Air Pollution Control Strategy (2007) | Cat 1: Whole  
Cat 7: Section 4.5  
Cat 10: Section 2.1.5 | Yes – official – [Link](#) |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>44</td>
<td>National Disaster Management Plan (1995)275</td>
<td>Cat 11: Section Four Cat 12: Sections Four (Public Broadcast &amp; Dissemination of Warnings) and Six</td>
<td>Yes – official – Link</td>
</tr>
</tbody>
</table>

**Case Law**

<table>
<thead>
<tr>
<th></th>
<th>Fiji Fish Marketing Group Ltd v Pacific Cement Ltd [2017] FJHC 252; Civil Action 68.2017 (22 Mar 2017)</th>
<th>Cat 4: [41], [46], [52], [53]</th>
<th>Yes – official – Link</th>
</tr>
</thead>
</table>

**Notes**  
* This provision responds to the category and is specific to children’s rights.

---

## Analysis Matrix | Children’s Right to a Healthy Environment

<table>
<thead>
<tr>
<th>I. OVERVIEW</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Number of relevant national legal instruments enacted since 1989? 276</td>
<td>41 277</td>
</tr>
<tr>
<td>2 Number of relevant national cases since 1989? 278</td>
<td>3 279</td>
</tr>
<tr>
<td>3 References to children’s right to a healthy environment in the national constitution?</td>
<td>There is a right to a healthy environment, but this right is not specific to children. 280</td>
</tr>
<tr>
<td>4 Has the country ratified the Convention on the Rights of the Child?</td>
<td>Yes 281</td>
</tr>
<tr>
<td>5 Has the country ratified the Optional Protocols on the Convention on the Rights of the Child?</td>
<td>(a) Yes 282</td>
</tr>
<tr>
<td>6 Is the country a monist or dualist state? 285 If dualist, is there a national legal instrument enacting the Convention on the Rights of the Child into national law?</td>
<td>There is no clear consensus on the issue of whether Indonesia is a monist or dualist State. The CRC has not been fully incorporated into Indonesia’s domestic law. 287</td>
</tr>
</tbody>
</table>

---

276 Comprises any national constitution, legislation (primary and secondary), bills, and official policy frameworks, at state and federal/local level (if applicable) that have been located and respond to categories set out in the Analysis Categories Table.

277 See the following orange table for Indonesia for more details. Note that the legal instruments generally contain obligations relating to the environment for the benefit of all persons (thereby including children) rather than specifically for the benefit of children.

278 A comprehensive case law review was not conducted as part of this study due to the limitations outlined at para 1.8 of this Paper. Case law is identified where it has been brought to the attention of this study via consultation with UNICEF Country Offices or through the work of the UNSR HRE pro bono legal team.

279 See the following orange table for Indonesia for more details. Note that the legal instruments generally contain obligations relating to the environment for the benefit of all persons (thereby including children) rather than specifically for the benefit of children.

280 See Constitution of the Republic of Indonesia 1945 (‘Constitution’) art 28H(1), which states: “Each person has a right to…enjoy a good and healthy environment, and to receive medical care”.

281 Ratified on 5 September 1990.

282 Ratified on 24 September 2012.

283 Ratified on 24 September 2012.


285 In monist states international treaty law is automatically incorporated into national law. In dualist states, national law must be enacted to incorporate the international treaty law at a national level.


## II. NATIONAL LEGAL INSTRUMENT (INDONESIA)

<table>
<thead>
<tr>
<th>Constitution</th>
<th>Responsive to which category?</th>
<th>Official English translation available?</th>
</tr>
</thead>
</table>
| 1 | The Constitution of the Republic of Indonesia (1945) | Cat 1: Art 28H(1)  
Cat 2: Art 28H(1)  
Cat 3: Art 28H(1)  
Cat 4: Art 28H(1)  
Cat 5: Art 28H(1)  
Cat 7: Arts 28A, 28B(2),* 28I  
Cat 17: Art 28H(1) | Yes – official (UNESCO) – [Link] |

### Laws

| 3 | Law No 6 of 2014 on Villages (2014) | Cat 5: Art 26(4)(o)  
Cat 7, 8: Arts 74(2), 78(1) | Yes – official – [Link] |
| 5 | Law No 1 of 2014 amending Law No 27 of 2007 on the Management of Coastal Area and Isles (2014) | Cat 12, 13, 16, 24: Art 60 | Yes – official (FAO) - [Link] |
| 6 | Law No 18 of 2013 on the Prevention and Eradication of Forest Destruction (2013) | Cat 7: Art 58(1)  
Cat 12: Art 58(2)(a)-(c)  
Cat 13, 14, 15, 17: Arts 58(2)(d)-(e), 61  
Cat 22: Chapter V  
Cat 23: Arts 64, 66  
Cat 24: Arts 10, 50, 52 | Yes – official (FAO) - [Link] |
| 7 | Regulation No 27 of 2012 on Environmental Licences (2012) | Cat 13, 14: Art 9  
Cat 20: Art 29(4)(a) | No – official in Indonesian – [Link] |

*Categories are outlined in the Analysis Categories Table at page 47 of this Paper.*
<table>
<thead>
<tr>
<th>No.</th>
<th>Document Title</th>
<th>Relevant Categories</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Regulation of the Minister of Forestry of RI No 60/Menhut-II/2009 on Guideline for Evaluation of Successful Forest Reclamation (2009)</td>
<td>Cat 5: Art 3</td>
<td>Yes – official (FAO) - <a href="#">Link</a></td>
</tr>
<tr>
<td>13</td>
<td>Law No 45 of 2009 amending Law No 31 of 2004 concerning Fishery (2009)</td>
<td>Cat 7, 8: Art 2 (as amended)</td>
<td>Yes – official (FAO) - <a href="#">Link</a></td>
</tr>
<tr>
<td>16</td>
<td>Government Regulation of the Republic of Indonesia No 21 of 2008 concerning Disaster Management (2008)</td>
<td>Cat 7: Art 53(1)*</td>
<td>Yes – official (FAO) - <a href="#">Link</a></td>
</tr>
<tr>
<td>No.</td>
<td>Document Title</td>
<td>Classification</td>
<td>Status</td>
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<tr>
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<tr>
<td>18</td>
<td>Government Regulation No 60 of 2007 regarding the Conservation of Fishery Resources (2007)</td>
<td>Cat 5: Whole</td>
<td>Yes – official (FAO) – Link</td>
</tr>
</tbody>
</table>
| 19  | Regulation of the Minister of Home Affairs No 1 of 2007 on the Arrangement of Green Open Spaces in the Cities (2007) | Cat 1: Art 3(b)  
Cat 2: Arts 3(b)*, 3(d)  
Cat 5: Recital a*, Art 2*  
Cat 9: Art 4(f)* | Yes – official (FAO) – Link |  |
Cat 11, 12: Arts 42, 43, 44  
Cat 12, 13, 16, 24: Art 60  
Cat 13, 14: Arts 68, 69  
Cat 22: Art 33 | Yes – official (FAO) – Link (original statute)  
Yes – official (FAO) – Link (amending statute) |  |
Cat 5: Arts 3, 8, 11  
Cat 11: Art 46  
Cat 12: Art 10(1)(a)  
Cat 23: Arts 10(1), 10(2) | Yes – official (FAO) – Link (original statute)  
Yes – official (FAO) – Link (amending statute) |  |
<table>
<thead>
<tr>
<th>No.</th>
<th>Law/Mandate</th>
<th>Categories</th>
<th>Articulation</th>
<th>Availability</th>
</tr>
</thead>
</table>
| 26  | Law No 7 of 2004 on Water Resources (2004)<sup>289</sup> | Cat 2: Arts 20, 21, 24, 26(6)  
Cat 7: Arts 3, 5  
Cat 10: Arts 70, 71  
Cat 12: Art 82(a), Chapter VII  
Cat 13: Art 82(d)  
Cat 16: Arts 82(b)(e)-(f), Chapter XIV, Art 84 | Yes – official (FAO) – Link |
Cat 10: Art 18 | Yes – official (FAO) – Link |
| 30  | MPR Decree No IX/MPR/2001 on Agrarian Reform and Management of Natural Resources (2001) | Cat 1: Arts 3, 4(g)*, 5(2)(c)  
Cat 2: Arts 3, 4(g)*, 5(2)(c)  
Cat 5: Arts 3, 4(g)*, 5(2)(c), 5(2)(f) | Yes – official (FAO) – Link |
| 31  | Government Regulation No 82 of 2001 on Management of Water Quality and Control over Water Pollution (2001) | Cat 2: Arts 15, 18, 24, 30(2), 31, 50  
Cat 12: Art 30(2)  
Cat 14: Art 30(3) | Yes – official (FAO) – Link |
Cat 24: Art 21 | Yes – official (FAO) – Link |
Cat 10: Art 8  
Cat 12: Arts 53(4), 54  
Cat 16, 24: Arts 74, 76 | Yes – official – Link |
| 35  | Law No 39 of 1999 on Human Rights (1999) | Cat 7, 8: Art 9(3) | Yes – official (ILO) – Link |

<sup>289</sup> This statute was revoked by the Constitutional Court on 18 February 2015. The Constitutional Court reinstated the earlier law until a new measure was adopted (see below item 46).
<table>
<thead>
<tr>
<th>Page</th>
<th>Legal Instrument</th>
<th>Categories</th>
<th>Status</th>
<th>Link</th>
</tr>
</thead>
<tbody>
<tr>
<td>37</td>
<td>Government Regulation No. 19 of 1999 on Control over Marine Contamination and/or Damage (1999)</td>
<td>Cat 2: Arts 10, 16; Cat 4: Art 18; Cat 16: Art 24(2)</td>
<td>Yes – official (FAO) – Link</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Law No. 5 of 1990 concerning Conservation of Living Resources and their Ecosystems (1990)</td>
<td>Cat 5: recital (a)<em>, (c)</em>; Arts 3, 4, 5*, 11, 12, 14-15, 21, 26 ff; Cat 24: Art 40</td>
<td>Yes – official (FAO) – Link</td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Act No 4 of 1982 concerning Basic Provisions for the Management of the Living Environment²⁹⁰</td>
<td>Cat 1: Arts 4(e), 17, 21, 22; Cat 2: Arts 4(e), 17, 21, 22; Cat 5: Arts 4(d)*, 8(1); Cat 7: Art 5; Cat 12: Arts 8, 9; Cat 14: Art 6(1); Cat 16: Arts 20, 21, 22</td>
<td>Yes – official (FAO) – Link</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Law No 11 of 1974 on Water Resources Development (1974)²⁹¹</td>
<td>Cat 2: Art 10(c); Cat 5: Art 13*; Cat 14: Art 12</td>
<td>Yes – official – Link</td>
<td></td>
</tr>
</tbody>
</table>

**Policies, Programmes, Plans and other**

<table>
<thead>
<tr>
<th>Page</th>
<th>Legal Instrument</th>
<th>Categories</th>
<th>Status</th>
<th>Link</th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>National Action Plan on Business and Human Rights (2017)²⁹²</td>
<td>Cat 19: page 33*; Cat 21: pages 8, 60*</td>
<td>Yes – official – Link</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Program for Pollution Control, Evaluation, and Rating (1995) (‘PROPER’)</td>
<td>Cat 1, 2, 4, 11, 12: Whole</td>
<td>Yes (summary document) – official (World Bank) – Link</td>
<td></td>
</tr>
</tbody>
</table>

²⁹⁰ This legal instrument is beyond the review criteria as it is dated pre-1989, and only included due to relevance to identified case law listed at (44) and (45). This law was repealed and replaced by Law No 32 of 2009 (see above, item 11).
²⁹¹ This legal instrument is beyond the review criteria as it is dated pre-1989, and only included due to relevance to identified case law listed at (46).
²⁹² This National Action Plan was developed by the National Commission on Human Rights (Komnas HAM) and civil society organisation Institute for Policy Research and Advocacy (ELSAM). It has not been formally adopted by the Republic of Indonesia and is not therefore recorded as a national legal instrument responsive to the Analysis Categories Table in Figure 4 of this Paper. It is included in this Analysis Matrix on the basis that it currently informs the development of a formal National Action Plan that will be adopted by Indonesia.
<table>
<thead>
<tr>
<th>Case Law</th>
<th>Cat</th>
<th>Summary</th>
<th>No – official in Indonesian – <a href="#">Link</a></th>
</tr>
</thead>
</table>
| Supreme Court Decision No 157/G/LH/2017/PTUN.BDG (18 May 2018)         | 5, 7, 8, 13, 14 | **Summary:** this case was an appeal from a lower court’s decision to cancel a building permit issued to a corporation to construct a tall building in a residential area. At first instance, the Plaintiffs, who were local residents in the intended construction zone, argued (among other things) that they had a communal right to a good and healthy environment, and to participate in environmental management under articles 65 and 70 of Law No 32 of 2009.  

**Held:** the Supreme Court upheld the decision to cancel the permit. The permit issuing procedure was considered flawed because the residents were not given an opportunity to respond to the building plan.                                                                                                                                                                                                                       |                                        |
| Supreme Court Decision No 187 K/TUN/LH/2017 (17 May 2017)              | 2, 4, 7, 22 | **Summary:** this was an appeal from a lower court’s decision to cancel permits issued to allow companies to dispose of liquid waste in a river. At first instance, the Plaintiffs (WAHLI and another environmental NGO) successfully sought to have the licences nullified because the water and soil in the area were already highly polluted and the Defendant had previously been sanctioned for polluting the same water. The Plaintiffs argued that issuing the permits was contrary to the principles under art 2 of Law No 32 of 2009.  

**Held:** the Supreme Court upheld the decision to cancel the permits, in particular noting that articles 65(2) and 70(1) of Law No 32 of 2009 grants every person the right to a good and healthy environment as a human right, and that the licences had been issued without regard to environmental impacts or the principles of environmental management.                                                                                                                                                                                                 |                                        |
| Constitutional Court Decision No 85/PUU-XI/2013 (2013)                 | 2, 12, 14 | **Summary:** the claimants sought a declaration that Law No 7 of 2004 on Water Resources was contrary to the Constitution, and therefore did not have binding legal force, on the basis that the law-making process had been tainted by private commercial interests, including the monopolisation of water resources for profit rather than for the greater prosperity of the population.                                                                                                                                                                                                 |                                        |
Held: the Constitutional Court revoked Law No 7 of 2004, on the basis that it did not comply with key principles limiting the management of water resources, as required under the Constitution. The Court acknowledged that water resources are a human right, and a critical factor in ensuring humans are able to live well. The earlier Law No 11 of 1974 on Water Resources was reinstated as an interim measure.

Notes
* This provision responds to the category and is specific to children’s rights.
### I. OVERVIEW

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Number of relevant national legal instruments enacted since 1989?</td>
<td>57&lt;sup&gt;294&lt;/sup&gt;</td>
</tr>
<tr>
<td>2</td>
<td>Number of relevant national cases since 1989?</td>
<td>1&lt;sup&gt;296&lt;/sup&gt;</td>
</tr>
<tr>
<td>3</td>
<td>References to children’s right to a healthy environment in the national constitution?</td>
<td>There is a right to a healthy environment for all citizens,&lt;sup&gt;297&lt;/sup&gt; but this right is not specific to children.</td>
</tr>
<tr>
<td>4</td>
<td>Has the country ratified the Convention on the Rights of the Child?</td>
<td>Yes&lt;sup&gt;298&lt;/sup&gt;</td>
</tr>
</tbody>
</table>
| 5 | Has the country ratified the Optional Protocols on the Convention on the Rights of the Child?  | (a) Yes<sup>299</sup>  
(b) Yes<sup>300</sup>  
(c) Yes<sup>301</sup> |
| 6 | Is the country a monist or dualist state?<sup>302</sup> If dualist, is there a national legal instrument enacting the Convention on the Rights of the Child into national law? | Monist<sup>303</sup> |

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<sup>293</sup> Comprises any national constitution, legislation (primary and secondary), bills, and official policy frameworks, at state and federal/local level (if applicable) that have been located and respond to categories set out in the Analysis Categories Table.

<sup>294</sup> See the following orange table for Mongolia for more details. Note that the legal instruments generally contain obligations relating to the environment for the benefit of all persons (thereby including children) rather than specifically for the benefit of children.

<sup>295</sup> A comprehensive case law review was not conducted as part of this study due to the limitations outlined at para 1.8 of this Paper. Case law is identified where it has been brought to the attention of this study via consultation with UNICEF Country Offices or through the work of the UNSR HRE pro bono legal team.

<sup>296</sup> Mongolian jurisprudence is not considered a source of law with precedential value. Therefore, courts are not bound to follow previous court decisions.

<sup>297</sup> Constitution of the People’s Republic of Mongolia (‘Constitution’) art 16(2) states: “The citizens of Mongolia shall be guaranteed the privilege to enjoy the following rights and freedoms:…(2) Right to healthy and safe environment, and to be protected against environmental pollution and ecological imbalance.”

<sup>298</sup> Ratified on 5 July 1990.

<sup>299</sup> Ratified on 6 October 2004.

<sup>300</sup> Ratified on 27 June 2003.

<sup>301</sup> Ratified on 28 September 2015.

<sup>302</sup> In monist states international treaty law is automatically incorporated into national law. In dualist states, national law must be enacted to incorporate the international treaty law at a national level.

<sup>303</sup> Constitution art 10(3).
### II. NATIONAL LEGAL INSTRUMENT (MONGOLIA)

<table>
<thead>
<tr>
<th>Constitution</th>
<th>Responsive to which category?</th>
<th>Official English translation available?</th>
</tr>
</thead>
</table>
| 1 Constitution of the People’s Republic of Mongolia (1992) | **Cat 1:** arts 16(2), 38(2)(4)  
**Cat 2:** arts 16(2), 38(2)(4)  
**Cat 3:** arts 16(2), 38(2)(4)  
**Cat 4:** arts 16(2), 38(2)(4)  
**Cat 5:** arts 16(2), 38(2)(4)  
**Cat 6:** arts 16(2), 38(2)(4)  
**Cat 7:** arts 16(1), 16(2), 16(6) | Yes – official – [Link](#) |

<table>
<thead>
<tr>
<th>Laws</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Law on Food (3 May 2018)</td>
<td><strong>Cat 12:</strong> arts 6.4.4, 7.2.2, 7.2.3</td>
<td>No – official in Mongolian – <a href="#">Link</a></td>
</tr>
</tbody>
</table>
| 3 Law on Youth Development (18 May 2017) | **Cat 7:** arts 3*, 10.1.1*  
**Cat 14:** art 3*  
**Cat 15:** art 5*  
**Cat 17:** art 5* | No – official in Mongolian – [Link](#) |
| 4 Law on Health (4 Feb 2016) | **Cat 1:** arts 4.3.1, 4.3.2,  
**Cat 2:** arts 4.1.4, 4.1.5  
**Cat 7:** arts 1, 4, 4.4, 13.1.3*, 14.1.1  
**Cat 10:** art 15.1*  
**Cat 14:** art 14.1.5  
**Cat 22:** art 2.2 | No – official in Mongolian – [Link](#) |
| 5 Law on Child Protection (2016) | **Cat 7:** art 5.2* | Yes – official – not publicly available |
| 6 Law on Healthcare (3 Jan 2013) | **Cat 7:** arts 5.1.3*, 6.2, 9, 10, 11 | No – official in Mongolian – [Link](#) |
| 7 Law on Water (17 May 2012) | **Cat 2:** whole – especially arts 12.1.4, 13.1.3, 15.1.2, 17.1.9, 19.1.3, 22, 24, 25, 28.16, 29.2.7, 30.1.3  
**Cat 3:** art 23  
**Cat 4:** arts 17.1.9, 24, 25  
**Cat 11:** arts 6, 7, 10.1.17, 17.1.5,  
**Cat 16:** arts 20.4.3, 25.3, 33  
**Cat 22:** art 2.2 | Yes – unofficial (FAO) – [Link](#) |

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304 Categories are outlined in the Analysis Categories Table at page 47 of this Paper.
<table>
<thead>
<tr>
<th>No.</th>
<th>Law</th>
<th>Categories</th>
<th>Official Status</th>
<th>Language</th>
<th>Link</th>
</tr>
</thead>
</table>
| 8   | Law on Water Pollution Fees (17 May 2012)                           | Cat 2: whole – especially arts 4, 5  
Cat 22: art 2.2 | No – official in Mongolian – Link |          |      |
| 9   | Law on Natural Resources Use Fee (17 May 2012)                      | Cat 5: arts 5, 7, 12, 14, 17 | No – official in Mongolian – Link |          |      |
| 10  | Law on Forestry (17 May 2012)                                       | Cat 5: arts 5, 8, 12.1.4, 13.1.3, 13.1.17, 18.2.5  
Cat 10: arts 20.2.3*, 20.2.7*, 41.2.1*, 41.2.3  
Cat 11: arts 6, 13.1.16, 13.1.33, 13.1.34, 18.2.17, 18.3.10, 19.2.3, 41.1  
Cat 12: arts 13.1.29, 15.1.2, 20.1, 25.1.3, 41  
Cat 16: arts 20.1.1, 45  
Cat 22: art 2.2 | Yes – official (FAO) – Link |          |      |
| 11  | Law on Air (2012)                                                    | Cat 1: whole – especially art 6.1.1  
Cat 16: art 9.1.10 | No – official in Mongolian – not publicly unavailable |          |      |
| 12  | Law on Soil Protection and the Prevention of Desertification (17 May 2012) | Cat 6: ch 9  
Cat 11: art 6.2, ch 10  
Cat 12: art 6.2, ch 10 | Yes – official in Mongolian – Link |          |      |
Cat 6: arts 4.2, 6.3  
Cat 13: art 5.4.8  
Cat 11: arts 7.6, 10.1.3  
Cat 12: art 7.5 | Yes – official in Mongolian (FAO) – Link |          |      |
| 14  | Law on Health (5 May 2011)                                          | Cat 7: art 4  
Cat 10: art 8.1.21  
Cat 12: art 19.26  
Cat 17: art 4.1.2  
Cat 22: arts 2.2, 4.1.6 | Yes – official in Mongolian – Link |          |      |
| 15  | Law on Air Policy (24 June 2010)                                    | Cat 1: whole – especially arts 1, 4, 5  
Cat 16: art 10.2  
Cat 22: art 2.2 | Yes – official in Mongolian – Link |          |      |
| 16  | Law on Health and Health Composition (27 May 2010)                  | Cat 7: art 27.4.2*  
Cat 12: arts 26.2, 26.3, 27.1, 27.4.2* | Yes – unofficial – Link |          |      |
Cat 4: art 4  
Cat 6: art 4  
Cat 16: arts 5, 6 | Yes – official (FAO) – Link |          |      |
<table>
<thead>
<tr>
<th>Law</th>
<th>Categories</th>
<th>Specific Article(s)</th>
<th>Official Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law on Renewable Energy (11 Jan 2007)</td>
<td>Cat 3: whole*</td>
<td></td>
<td>No – official in Mongolian (FAO) – Link</td>
</tr>
<tr>
<td>Law on Minerals (8 July 2006)</td>
<td>Cat 2: art 27.1.10; Cat 4: art 66.4; Cat 6: whole – especially arts 37–39, 40, 44, 45.1.1, 45.2; Cat 11: arts 11.1.3, 11.1.5, 57; Cat 12: arts 11.1.4, 11.1.15, 11.1.22, 13.2, 16.4, 57; Cat 16: art 41; Cat 20: arts 38, 39, 39.1.2, 39.1.3, 39.1.9/39.3, 40, 42.3, 45.2</td>
<td>Yes – official (FAO) – Link</td>
<td></td>
</tr>
<tr>
<td>Law on Hazardous and Toxic Chemicals (5 May 2006)</td>
<td>Cat 4: whole – especially arts 6, 8, 13, 15; Cat 7: arts 6.4, 8.1, 13.1; Cat 11: art 7; Cat 24: arts 19, 20</td>
<td></td>
<td>Yes – official (FAO) – Link</td>
</tr>
<tr>
<td>Law Amending the Environmental Protection Law (18 Nov 2005)</td>
<td>Cat 4: pt. IV (amendment to art 21.4); Cat 5: amendment 13; Cat 24: amendment 15</td>
<td></td>
<td>Yes – unofficial (FAO) – Link</td>
</tr>
<tr>
<td>Law Regulating Animals and Plants Products Traded Nationwide, Quarantine and Transportation (28 Nov 2002)</td>
<td>Cat 4: art 15.1.5; Cat 7: arts 8.1.5, 15.1.4, 26.2; Cat 22: arts 9.1.1, 11.1.1, 27.1; Cat 24: art 32</td>
<td></td>
<td>Yes – official in Mongolian (FAO) – Link</td>
</tr>
<tr>
<td>Law on the Regulation of Foreign Trade of Endangered Animal and Plant Species and Derivatives thereof (7 Nov 2002)</td>
<td>Cat 5: art 7; Cat 11: art 6; Cat 24: art 15</td>
<td></td>
<td>Yes – official (FAO) – Link</td>
</tr>
<tr>
<td>Criminal Code of Mongolia (1 Sep 2002)</td>
<td>Cat 1: art 202; Cat 2: art 208; Cat 4: arts 205, 206, 207; Cat 5: arts 84, 203, 208, 212, 300, 304; Cat 6: art 204.2; Cat 24: art 304</td>
<td></td>
<td>Yes – official – Link</td>
</tr>
<tr>
<td>Law on Energy (1 Feb 2001)</td>
<td>Cat 3: art 6; Cat 7: art 32.1.1; Cat 11: art 9.1.9</td>
<td></td>
<td>Yes – unofficial (FAO) – Link</td>
</tr>
<tr>
<td>No.</td>
<td>Title</td>
<td>Categories</td>
<td>Remarks</td>
</tr>
<tr>
<td>-----</td>
<td>----------------------------------------------------------------------</td>
<td>------------</td>
<td>--------------------------</td>
</tr>
</tbody>
</table>
| 28  | Law on Licensing (1 Feb 2001)                                        | Cat 1: art 15.6.5  
Cat 3: art 15.6.1  
Cat 4: arts 15.6.2*, 15.6.3  
Cat 5: art 2.3 | Yes – official (Ecolex) – Link |
| 29  | Law on the Import, Export and Cross-border Transport of Hazardous Waste (3 Nov 2000) | Cat 4: arts 4-6,  
Cat 16: arts 7, 8  
Cat 22: art 2.2 | Yes – official (FAO) – Link |
| 30  | Law on Fauna (5 May 2000)                                             | Cat 5: arts 6-9,  
Cat 11: art 18  
Cat 24: art 25 | Yes – official (FAO) – Link |
| 32  | Law on Sanitation (7 May 1998)                                        | Cat 1: art 6  
Cat 2: arts 5, 15.2.5  
Cat 4: arts 7, 10, 14.4, 15.2.5, 16.1.4, 18.1.3, 18.1.4 | Yes – official (FAO) – Link |
| 33  | Law on Environmental Impact Assessment (22 Jan 1998)                  | Cat 5: art 1.1  
Cat 6: art 6.3  
Cat 12: art 7.5  
Cat 14: art 5.4.8 | Yes – official (FAO) – Link |
Cat 2: arts 5, 7  
Cat 3: arts 2, 4.1.1, 5.1, 6*, 7.1  
Cat 11: arts 9-15 | No – official in Mongolian – Link |
| 36  | Law on the Rights of the Child (1996)                                 | Cat 6: art VII.6*  
Cat 7: arts V.2*, XII.1.1*, XV.1*  
Cat 9: arts XI.2.3*, XI.2.8*  
Cat 10: art X.4*  
Cat 12: arts IV.5*, VI.5*  
Cat 13: arts VIII.2*, VIII.3*, XII.1.7*  
Cat 14: art XXI.1*  
Cat 16: arts XXIV*, XXV*  
Cat 17: art IV.1* | Yes – unofficial (ILO) – Link |
<p>| 37  | Law on Water and Mineral Water Use Fees (22 May 1995)                | Cat 2: arts 3, 12 | Yes – official (FAO) – Link |</p>
<table>
<thead>
<tr>
<th>ID</th>
<th>Law</th>
<th>Categories</th>
<th>Details</th>
<th>Status</th>
</tr>
</thead>
</table>
| 38  | Law on Fees for the Use of Natural Flora (19 May 1995)              | Cat 5: arts 3-4  
Cat 11: art 8.4  
Cat 24: art 11 | Yes – official (FAO) – [Link](#) | Cat 5: arts 3-4  
Cat 11: art 8.4  
Cat 24: art 11 | Yes – official (FAO) – [Link](#) | Cat 5: arts 3-4  
Cat 11: art 8.4  
Cat 24: art 11 | Yes – official (FAO) – [Link](#) |
Cat 11: art 8.4  
Cat 24: art 11 | Yes – official (FAO) – [Link](#) | Cat 5: arts 3-5, 11  
Cat 11: art 8.4  
Cat 24: art 11 | Yes – official (FAO) – [Link](#) | Cat 5: arts 3-5, 11  
Cat 11: art 8.4  
Cat 24: art 11 | Yes – official (FAO) – [Link](#) |
| 40  | Law on Natural Flora (11 Apr 1995)                                   | Cat 4: arts 7.3, 7.4  
Cat 5: whole – especially arts 3-7, 9  
Cat 11: arts 5, 7 | Yes – official (FAO) – [Link](#) | Cat 4: arts 7.3, 7.4  
Cat 5: whole – especially arts 3-7, 9  
Cat 11: arts 5, 7 | Yes – official (FAO) – [Link](#) | Cat 4: arts 7.3, 7.4  
Cat 5: whole – especially arts 3-7, 9  
Cat 11: arts 5, 7 | Yes – official (FAO) – [Link](#) |
| 41  | Law on Forests (31 Mar 1995)                                        | Cat 3: art 23.1  
Cat 4: art 20.5  
Cat 5: arts 3-4, 9, 12, 20-3  
Cat 11: art 5 | Yes – official (FAO) – [Link](#) | Cat 3: art 23.1  
Cat 4: art 20.5  
Cat 5: arts 3-4, 9, 12, 20-3  
Cat 11: art 5 | Yes – official (FAO) – [Link](#) | Cat 3: art 23.1  
Cat 4: art 20.5  
Cat 5: arts 3-4, 9, 12, 20-3  
Cat 11: art 5 | Yes – official (FAO) – [Link](#) |
| 42  | Environmental Protection Law (1995)                                 | Cat 1: arts 3.1(6), 21  
Cat 2: arts 3.1(3), 21  
Cat 4: arts 19.2(5), 10.3, 20.1, 21, 31(3)  
Cat 5: whole – especially arts 1, 3-4, 6, 14.1, 21, 34  
Cat 6: art 3.1(2)  
Cat 7: arts 4.1(1), 5.1, 11.1, 14.1(3), 19.2(6), 20.1  
Cat 10: arts 4.2(2)*, 14(6), 19.2(4), 32.1(3), 34.2, 36  
Cat 11: arts 10-12  
Cat 12: arts 4.4,10-12  
Cat 20: art 9  
Cat 24: art 4.1(1) | Yes – official (FAO) – [Link](#) | Cat 1: arts 3.1(6), 21  
Cat 2: arts 3.1(3), 21  
Cat 4: arts 19.2(5), 10.3, 20.1, 21, 31(3)  
Cat 5: whole – especially arts 1, 3-4, 6, 14.1, 21, 34  
Cat 6: art 3.1(2)  
Cat 7: arts 4.1(1), 5.1, 11.1, 14.1(3), 19.2(6), 20.1  
Cat 10: arts 4.2(2)*, 14(6), 19.2(4), 32.1(3), 34.2, 36  
Cat 11: arts 10-12  
Cat 12: arts 4.4,10-12  
Cat 20: art 9  
Cat 24: art 4.1(1) | Yes – official (FAO) – [Link](#) | Cat 1: arts 3.1(6), 21  
Cat 2: arts 3.1(3), 21  
Cat 4: arts 19.2(5), 10.3, 20.1, 21, 31(3)  
Cat 5: whole – especially arts 1, 3-4, 6, 14.1, 21, 34  
Cat 6: art 3.1(2)  
Cat 7: arts 4.1(1), 5.1, 11.1, 14.1(3), 19.2(6), 20.1  
Cat 10: arts 4.2(2)*, 14(6), 19.2(4), 32.1(3), 34.2, 36  
Cat 11: arts 10-12  
Cat 12: arts 4.4,10-12  
Cat 20: art 9  
Cat 24: art 4.1(1) | Yes – official (FAO) – [Link](#) |
| 43  | Law on Special Protected Areas (15 Nov 1994)                         | Cat 5: whole – especially arts 3, 7-12, 13  
Cat 11: arts 27(2), 30(9)  
Cat 23: art 5  
Cat 24: arts 39, 43 | Yes – official (FAO) – [Link](#) | Cat 5: whole – especially arts 3, 7-12, 13  
Cat 11: arts 27(2), 30(9)  
Cat 23: art 5  
Cat 24: arts 39, 43 | Yes – official (FAO) – [Link](#) | Cat 5: whole – especially arts 3, 7-12, 13  
Cat 11: arts 27(2), 30(9)  
Cat 23: art 5  
Cat 24: arts 39, 43 | Yes – official (FAO) – [Link](#) |
| 44  | Law on Petroleum (18 Jan 1991)                                       | Cat 6: arts 4, 6  
Cat 24: art 14 | Yes – official (FAO) – [Link](#) | Cat 6: arts 4, 6  
Cat 24: art 14 | Yes – official (FAO) – [Link](#) | Cat 6: arts 4, 6  
Cat 24: art 14 | Yes – official (FAO) – [Link](#) |
| 45  | Law on Subsoil (29 Nov 1989)                                         | Cat 4: art 41.2(8)  
Cat 5: arts 3.4, 15, 20.1(3), 22(4), 36, 41, 53.1(5)  
Cat 6: whole – especially art 6.3, 28, 31-35  
Cat 11: arts 7.2, 45-50  
Cat 12: arts 45-50  
Cat 24: arts 31(3), 58-60 | Yes – official – [Link](#) | Cat 4: art 41.2(8)  
Cat 5: arts 3.4, 15, 20.1(3), 22(4), 36, 41, 53.1(5)  
Cat 6: whole – especially art 6.3, 28, 31-35  
Cat 11: arts 7.2, 45-50  
Cat 12: arts 45-50  
Cat 24: arts 31(3), 58-60 | Yes – official – [Link](#) | Cat 4: art 41.2(8)  
Cat 5: arts 3.4, 15, 20.1(3), 22(4), 36, 41, 53.1(5)  
Cat 6: whole – especially art 6.3, 28, 31-35  
Cat 11: arts 7.2, 45-50  
Cat 12: arts 45-50  
Cat 24: arts 31(3), 58-60 | Yes – official – [Link](#) |
<table>
<thead>
<tr>
<th>No.</th>
<th>Policy/Programme/Plan</th>
<th>Categories</th>
<th>Description</th>
<th>Official Link</th>
</tr>
</thead>
</table>
| 46  | Sustainable Development Vision 2030 (2016) | Cat 1: arts 2.1, 2.3.3  
Cat 2: art 2.3.1  
Cat 3: art 2.3.2  
Cat 4: art 2.1.3, 2.3  
Cat 5: art 2.3.3  
Cat 6: art 2.1.4  
Cat 7: art 2.1.3, 2.2  
Cat 8: art 2.2.2 | Yes – official – [Link](#) |}
| 47  | Action Program of the Government of Mongolia 2016-2020 | Cat 1: arts 2.85, 4.1.6  
Cat 2: arts 4.1.6, 4.2.1, 4.2.5  
Cat 3: art 4.1.5  
Cat 4: art 4.1.6  
Cat 7: art 3.1  
Cat 8: art 3.2.6*  
Cat 10: arts 3.2.16*, 4.1.7*  
Cat 11, 12: art 4.3.4  
Cat 16: arts 3.4.4*, 5.3.5* | Yes – official – [Link](#) |}
Cat 3: goal 5  
Cat 4: goal 6  
Cat 5: whole - especially section 5  
Cat 6: goals 5, 6, 7, 9, 10, 11, 12, 14  
Cat 7: goal 6  
Cat 10: goal 1  
Cat 12: goal 1 | Yes – official (FAO) – [link](#) |}
| 49  | Green Development Policy (2014) | Cat 1: art 3.6.2  
Cat 2: arts 3.2.9, 3.6.2  
Cat 3: art 3.1  
Cat 4: arts 3.1.8, 3.6.4  
Cat 5: arts 3.2, 3.6.1, 3.6.3  
Cat 6: arts 3.1.7-3.1.10, 3.2.2, 3.5.3  
Cat 7: arts 2.1*, 3.1.9, 3.1.12, 3.2.6  
Cat 8: arts 3.4.5, 3.6.1  
Cat 10: art 3.5  
Cat 22: arts 3.1.3, 3.1.10, 3.5.2 | Yes – official – [Link](#) |
<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Category(s)</th>
<th>Link</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>State Minerals Policy for 2014–2025 (2014)</td>
<td>Cat 4: art 3.4.1, 4.3.8, 6, 22: arts 3.3, 4.3.8</td>
<td>Yes – unofficial – <a href="#">Link</a></td>
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<tr>
<td>51</td>
<td>National Action Programme on Climate Change (NAPCC) (2011)</td>
<td>Cat 3: whole, 5: arts 3.2.11, 3.2.21, 6: art 3.3.19, 7: arts 2.4.2, 4.2.4.11, 5.1(2), 8: art 3.5.9, 10: arts 3.5.3, 4.2.4.10, 12: arts 2.2.5, 3.5.1, 3.5.2, 4.2.1.3*, 4.2.3.2, 13: arts 2.2.5, 2.3.1, 4.2.3.2, 22: art 3.1.2</td>
<td>No – official in Mongolian – <a href="#">Link</a></td>
</tr>
<tr>
<td>52</td>
<td>Mongolia Second National Communication under the United Nations Framework Convention on Climate Change (2010)</td>
<td>Cat 2: sections 4.2.1(B), 4.2.1(C), Table 4.10, 9.2.4, 3: ch 4, section 6.5, 4: sections 4.2.4, 4.2.5, 5.1.5, 6: sections 4.2.4, 5.1.1, 5.1.2, 6.5.7, 7: section 2.11.2, 10: section 9.1*, Project 11 (Annex II)*</td>
<td>Yes – official – <a href="#">Link</a></td>
</tr>
<tr>
<td>No.</td>
<td>Document Title</td>
<td>Category</td>
<td>Link</td>
</tr>
<tr>
<td>-----</td>
<td>----------------------------------------------------------</td>
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</table>
Cat 2: arts 12.2.3*, 27.4*  
Cat 5: art 5.10*  
Cat 10: arts 12.2.6*, 27.4*  
Cat 12: art 6.4*  
Cat 13: arts 3*, 5.9*, 6.1*, 21*, 22*  
Cat 17: art 5.3*  
Cat 24: art 12.2.5* | Yes – unofficial – [Link](Youth Policy Org) |
Cat 5: art 2.1.3  
Cat 11: art 2.4.1, Annex I (Project 1)*, Annex I (Project 10)  
Cat 23: art 2.4.1 | Yes – official – [Link](Youth Policy Org) |
|     | **Case Law**                                             |          |                                                                      |
| 58  | Decision No.2 (20 Feb 2008), Constitutional Court       | Cat 4, 6  
**Summary:** over 300 Mongolian citizens applied to the Constitutional Court to review whether Resolution No.65 (20 March 2007) (which expanded the list of toxic and hazardous substances that could be transported across Mongolia’s borders) breached the constitutional right of Mongolians to a healthy and safe environment and to be protected against environmental pollution and ecological imbalance. The applicants alleged that adequate professional staff and equipment were not available at relevant border points and that large volumes of hazardous toxic chemicals (sodium cyanide, mercury) were crossing into Mongolia with insufficient monitoring.  
**Held:** Resolution No.65 did not contravene the constitutional right to live in a healthy and safe environment, and there was insufficient evidence to prove that such hazardous chemical substances had been transported across Mongolian borders. | Yes – official in Mongolian – [Link](Youth Policy Org) |

**Notes**

* This provision responds to the category and is specific to children’s rights.
### VIET NAM | Analysis Matrix | Children’s Right to a Healthy Environment

<table>
<thead>
<tr>
<th>I. OVERVIEW</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Number of relevant national legal instruments enacted since 1989? (305)</td>
<td>36 (306)</td>
</tr>
<tr>
<td>2 Number of relevant national cases since 1989? (307)</td>
<td>1 (308)</td>
</tr>
<tr>
<td>3 References to children’s right to a healthy environment in the national constitution?</td>
<td>There is a right to live in a clean, rather than healthy, environment, (309) which is not specific to children.</td>
</tr>
<tr>
<td>4 Has the country ratified the Convention on the Rights of the Child?</td>
<td>Yes (310)</td>
</tr>
<tr>
<td>5 Has the country ratified the Optional Protocols on the Convention on the Rights of the Child?</td>
<td></td>
</tr>
<tr>
<td>(a) Optional Protocol on the involvement of children in armed conflict (2000)</td>
<td>(a) Yes (311)</td>
</tr>
<tr>
<td>(b) Optional Protocol on the sale of children, child prostitution and child pornography (2000)</td>
<td>(b) Yes (312)</td>
</tr>
<tr>
<td>(c) Optional Protocol on a communications procedure (2011)</td>
<td>(c) No</td>
</tr>
<tr>
<td>6 Is the country a monist or dualist state? (313) If dualist, is there a national legal instrument enacting the Convention on the Rights of the Child into national law?</td>
<td>There is no clear consensus on the issue of whether Viet Nam is a monist or dualist State (314)</td>
</tr>
</tbody>
</table>

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305 Comprises any national constitution, legislation (primary and secondary), bills, and official policy frameworks, at state and federal/local level (if applicable) that have been located and respond to categories set out in the Analysis Categories Table.

306 See the following orange table for Viet Nam for more details. Note that the legal instruments generally contain obligations relating to the environment for the benefit of all persons (thereby including children) rather than specifically for the benefit of children.

307 A comprehensive case law review was not conducted as part of this study due to the limitations outlined at para 1.8 of this Paper. Case law is identified where it has been brought to the attention of this study via consultation with UNICEF Country Offices or through the work of the UNSR HRE pro bono legal team.

308 Vietnamese jurisprudence is not generally considered a source of law with precedential value. Therefore, courts are generally not bound to follow previous court decisions.

309 Constitution of the Socialist Republic of Viet Nam 2013, art 43 states: “Everyone has the right to live in a clean environment and has the duty to protect the environment”.

310 Ratified on 28 February 1990.

311 Ratified on 20 December 2001.

312 Ratified on 20 December 2001.

313 In monist states international treaty law is automatically incorporated into national law. In dualist states, national law must be enacted to incorporate the international treaty law at a national level.


<footnote>76</footnote>
<table>
<thead>
<tr>
<th>II. NATIONAL LEGAL INSTRUMENT (VIET NAM)</th>
<th>Responsive to which category?\textsuperscript{315}</th>
<th>Official English translation available?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 1 Constitution of the Social Republic of Viet Nam (2013) | Cat 3, 5: Art 63(2)  
Cat 9: Art 37(2)*  
Cat 12: Art 25  
Cat 14: Art 37(1)*  
Cat 16: Art 63 | Yes – official – [Link](#) |
| Laws                                     |                                                 |                                      |
| 2 Decree No 40/2019/ND-CP (2019) amending and supplementing a number of Decrees detailing and guiding the implementation of the Law on Environment Protection and other environmental and waste management laws | Cat 2: whole  
Cat 4: whole | No – official in Vietnamese – [Link](#) |

\textsuperscript{315} Categories are outlined in the Analysis Categories Table at page 47 of this Paper.
<table>
<thead>
<tr>
<th></th>
<th>Title</th>
<th>Category</th>
<th>Link Status</th>
</tr>
</thead>
</table>
Cat 9: Art 17*, Art 45*, Art 99*  
Cat 12: Art 33  
Cat 13: Art 5(4)*, Art 34*, Art 47*, Art 78*  
Cat 17: Art 5(5)*, Art 6(8)*  
NB: Art 31* provides for children’s right to be protected from natural disasters and environmental pollution. | Yes – official – Link                              |
Cat 11: Arts 73(2)(e), 6(2)(d)  
Cat 23: Art 72 | Yes – official (FAO) – Link                              |
Cat 14: Arts 53, 54 | Yes – official (FAO) – Link                              |
| 12| Decision 1235/QD-TTg dated 3 August 2015 approving the promotion of the children’s right to participate in children’s issues for the period 2016 to 2020 (2015) | Cat 13: whole* | No – official in Vietnamese – Link |
Cat 2: Arts 49-58  
Cat 3: Art 5(4), Chapter IV (Arts 39–48)  
Cat 4: Arts 7(4)-(6) and (9), 49(2), Chapter IX (Art 85–101), Arts 139(5), 141(7)  
Cat 5: Arts 5(3), 35-36, 139(5), 141(7)  
Cat 6: Chapter III (Arts 35-38)  
Cat 10: Art 155(2)  
Cat 11: Arts 107(3)(c), 125, 129-131,* 134-138, 141(4), 143(1)(c)  
Cat 12: Arts 6(1), 21, 46, 146  
Cat 22: Arts 5(8), 47, 139(8)-(9), 152  
Cat 23: Arts 4(4), 5(11), 48, 158 | Yes – official (FAO) – Link                              |
NB: Art 4* sets out principles of environmental protection, and it sub-article 4(2) refers to harmonisation with children’s rights.

| 16 | Decision 2139/QĐ-TTg approving the national strategy for climate change dated 5 December (2011) | Cat 3: whole Cat 7: Chapter IV, Art 7(b) | Yes – official (FAO) – [Link](#) |

**Policies, Programmes, Plans and other**

<p>| 20 | Joint Program signed by Minister of Natural Resources and Environment and Minister of Education and Training for Environmental Protection on the environmental protection missions for the period 2019-2025 (2019) | Cat 11: whole Cat 12: whole | No – unavailable |
| 21 | Intended Nationally Determined Contribution of Viet Nam (2016) (Viet Nam’s first NDC under the UNFCCC) | Cat 3: whole, page 8* | Yes – official – <a href="#">Link</a> |</p>
<table>
<thead>
<tr>
<th>No</th>
<th>Plan Description</th>
<th>Cat</th>
<th>Notes</th>
</tr>
</thead>
</table>
| 23 | Implementation Plan of Paris Agreement of Viet Nam (2016) No 71/NQ-CP | Cat 3: whole  
Cat 22: whole  
Cat 23: whole | Yes – official – link |
| 24 | Government’s Action Program to implement Resolution of the XII National Party Congress issued under Resolution No 64/NQ-CP (2016) | Cat 3: whole  
Cat 22: whole | Yes – official – Link |
Cat 3: Chapter III Art 7  
Cat 7: Chapter III Art 5* | Yes – official (World Bank) – Link |
Cat 22: whole | No – official in Vietnamese (FAO) – Link |
| 27 | National Greenhouse Gas (GHG) Inventory System approved by Decision No 2359/QD-TTg (2015) | Cat 3: whole  
Cat 22: whole | No – see the summary by the Ministry of Natural resources and Environment – Link |
| 28 | Renewable Energy Development Strategy up to 2030 with a vision to 2050 approved by Decision No 2068/QD-TTg (2015) | Cat 3: whole  
Cat 11: whole  
Cat 22: whole | No – unavailable |
| 29 | National Plan of Action for children for the period 2012-2020, approved by the Prime Minister’s Decision No 1555/Qd-TTg (2012) | Cat 14: Art 1(3)(b)  
Cat 22: Art 1(4)(d) | No – official in Vietnamese – Link |
| 30 | National Strategy on Environment Protection to 2020 with Visions to 2030 approved by Decision No 1216/QD-TTg (2012) | Cat 1: whole  
Cat 2: whole | Yes – official – Link |
Cat 2: whole  
Cat 3: whole  
Cat 4: whole  
Cat 6: whole  
Cat 10: whole  
Cat 12: whole | Yes – official – Link |
| 34 | Master plan on biotechnology development and application in Viet Nam up to 2020, approved by Decision No 14/2008/QD-TTg (2008) | Cat 22: Chapter II Art 2(c) | Yes – official (FAO) – Link |
Cat 14: Chapter III Art 3(b) | Yes – official (FAO) – Link |
|---|---|---|---|
Cat 12: whole  
Cat 22: whole | Yes – official (UN) – Link |
| **Case Law** | **Case Law** | **Case Law** | **Case Law** |
|   | Formosa Plastics Group litigation (2016) | Cat 2: whole  
Cat 4: whole  
Cat 24: whole | Official case law inaccessible; information sourced from news and other media.  

**Summary:** the Formosa Plastics Group was fined US$500 million in 2016 for extensive toxic waste discharge into the ocean by one of its subsidiary corporations operating in Viet Nam, which killed large quantities of fish and other sea life. |

**Notes**  
* This provision responds to the category and is specific to children’s rights.  

---

For every child

Whoever she is.
Wherever he lives.
Every child deserves a childhood.
A future.
A fair chance.
That’s why UNICEF is there.
For each and every child.
Working day in and day out.
In more than 190 countries and territories.
Reaching the hardest to reach.
The furthest from help.
The most excluded.
It’s why we stay to the end.
And never give up.