

Realising Children's Rights through a Healthy Environment

This submission is made on behalf of the Child Rights International Network - CRIN (www.crin.org) for the forthcoming report of OHCHR (October 2019).

Introduction

The damaging impact of environmental damage on children is no longer a matter for debate. It is incontrovertible that environmental degradation, climate change, exposure to pollution and toxic substances and wastes profoundly affects the quality of life of all people. For children, who are particularly susceptible to the adverse effects of environmental damage, this harm is dramatically exacerbated. These effects are not only damaging, they are also a systematic violation of the rights of children committed by States and private actors.¹ This submission focuses on the recognition of the extent of the children's rights violations that take place in this context but also the realisation of children's civil and political rights and their right to access justice, which is necessary to secure accountability for these rights violations and provide remedies.

Bodily integrity and toxic exposure

The exposure of children to toxic material unambiguously violates a wide range of children's rights set out in the UN Convention on the Rights of the Child (CRC). Application of the right to bodily integrity demonstrates the true scope of protection to which children are entitled.

The UN Special Rapporteur on human rights and hazardous substances refers to the right to physical and mental integrity in his report on children's rights and toxics, explaining that this right encapsulates the right of each human being, including children, to autonomy and self-determination over his or her own body. He further develops that a non-consensual physical or mental intrusion against the body constitutes a human rights violation and concludes that this right is implicated by human exposure to toxics, whether this is acute poisoning or low-level exposure to toxic substances.²

In his 2018 report to the General Assembly, the UN Special Rapporteur wrote:

27. Children today are born "pre-polluted" with numerous contaminants that have an impact on their rights to survival and development, to be heard, to physical integrity and to health, among others. Representative studies have measured hundreds of toxic and otherwise hazardous chemicals in children in-utero and after birth through their mother's exposure. Exposure to toxics and pollution continues incessantly after birth. While the studies primarily come from certain countries, every child in every country is a victim of this "toxic trespass" to varying degrees. Many of these

¹ For further details about the impacts of toxic chemicals on children's rights, see CRIN's briefing on *Children's rights and toxics*. Available at: https://archive.crin.org/sites/default/files/childrens_rights_and_toxics_-_footnotes.pdf

² Report of the Special Rapporteur on Human Rights and Toxics on The Rights of the Child and Toxics, A/HRC/33/41 (2016), para. 29 and 34

exposures are transboundary in origin, including emissions into air and water and global production, consumption and disposal patterns, requiring global action.³

Toxic trespass, as the exposure and contamination of children's bodies to toxic and hazardous chemicals without their consent, is a violation of the principle of bodily integrity, entailing breaches of their rights to health and freedom from harm. That the cause of these violations is further removed from the physical space of the body than a surgeon's knife does not mean that those responsible are not caught by the obligation to preserve bodily integrity.

Denial of the basic necessities for survival and development interferes with bodily integrity because they compromise the body's functioning and even existence. It is vital therefore that the principle of bodily integrity is understood to comprise the positive duty to secure the body's most fundamental needs, as well as the negative duty not to interfere with one's personal autonomy without informed consent. As the Special Rapporteur on human rights and hazardous substances has reported, "the violation of a child's physical integrity from toxics cannot be undone",⁴ therefore prevention must be the primary means of ensuring the realisation of children's right to bodily integrity.

Civil and political rights

The climate crisis has demonstrated a global political awakening among children and young people exercising their civil and political rights. The existence of these rights is well established and children are entitled to the full civil and political rights enshrined in the International Covenant on Civil and Political Rights (ICCPR) as well as under the Convention on the Rights of the Child (CRC). Yet children are systematically left out of policy-making, constituting a direct violation of these civil and political rights and face specific barriers to their full exercise of these rights.

Children's right to be heard is enshrined in article 12 of the Convention on the Rights of the Child. It is a right in itself and a tool to interpret and apply all other rights under the Convention.⁵ In order to be fully realised, this principle requires children's views to be heard and given due weight in legislation, policy debates and before courts and complaint mechanisms. A study of children's attitudes to political issues across 41 countries conducted in 2016 found that the environment, alongside education and food were the top concerns for children around the world.⁶ For the realisation of children's right to be heard to be meaningful, these views must be given due weight within the political process.

Children also have the right to freedom of expression as anybody else, which covers the right to seek, receive and impart information and ideas of all kinds.⁷ They also have the right

³ Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (2018). Retrieved from: <https://undocs.org/pdf?symbol=en/A/73/567>

⁴ Report of the Special Rapporteur on Human Rights and Toxics on The Rights of the Child and Toxics, A/HRC/33/41 (2016), para. 42

⁵ Committee on the Rights of the Child, General Comment No. 12 (2009), para. 6

⁶ Child Fund International, Small Voices, Big Dreams, May 2016. Available at: <https://www.childfund.org/childrens-voices/>

⁷ UN Convention on the Rights of the Child, article 13 (1)

to freedom of association and to freedom of peaceful assembly.⁸ These rights unquestionably include the right to speak out and protest. The protection of children who engage in political demonstrations or protests related to environmental rights is critical in a context in which human rights defenders are at particular risk of retaliation. The leading role that children and young people have taken in climate protests and campaigning in recent years demonstrates the value and effectiveness of children's exercise of their civil and political rights to ensure a healthy environment.

In a number of cases, children who have participated in protests in this context have faced punishment from schools, whether in the form of detentions, suspension, or the academic consequences of truancy being recorded.⁹ These penalties amount to a restriction on children's exercise of the right to expression, association and assembly, but also potentially entail a conflict with the aims of education as set out within the CRC, which requires States to "direct education of the child to... [t]he development of respect for human rights and fundamental freedoms" as well as for "[t]he preparation of the child for responsible life in a free society" and "[t]he development of respect for the natural environment".¹⁰

Beyond free expression, assembly and association, voting is perhaps the archetypal form of political participation. Though no country in the world allows children under the age of 16 to vote, 24 countries allow some children under the age of 18 to vote in local or national elections.¹¹ This limited extension of the franchise to children is a step towards more fully recognising children's right to be heard and for their views to be given due weight in the political process.¹²

The value children's civil and political rights is not contingent on any benefit that it brings to the community as a whole, but nonetheless the exercise of children's rights to expression, association and peaceful assembly and inclusion within the electorate are a profound means of holding accountable those making lasting political decisions that impact children today and in the long term. The realisation of children's civil and political rights holds political decision makers directly responsible to children for the decisions they make that affect children's lives. Political accountability to children ensures that States must take account of their interests.

⁸ UN Convention on the Rights of the Child, article 15 (1)

⁹ See, for example in Germany at

<https://www.thelocal.de/20190709/fridays-for-future-student-protesters-face-fines-in-western-germany-for-skipping-school/>; in Switzerland at

<https://www.rts.ch/info/suisse/10283341-quelles-consequences-pour-les-eleves-participant-a-la-greve-du-climat-htm>]; in New Zealand at

<https://www.stuff.co.nz/environment/climate-news/111013724/students-who-strike-for-climate-change-will-be-marked-as-truants-principals-say>; in the US at

<https://manualredeye.com/71350/news/local/climate-change-walkout-suspension/>

¹⁰ Convention on the Rights of the Child, Article 29.

¹¹ CRIN, *What Lies Beneath*, 2018, pp. 10-11. Available at:

https://archive.crin.org/sites/default/files/crin_report_2018_edition.pdf.

¹² For further discussion of the right to vote and the development of relevant international human rights standards, see CRIN, Submission on the Forum on Human Rights, Democracy and the Rule of Law on parliaments as promoters of human rights, democracy and the rule of law, 4 May 2018. Available at:

https://archive.crin.org/sites/default/files/crins_submission_on_the_forum_on_human_rights_democracy_and_the_rule_of_law_on_parliaments_as_promoters_of_human_rights_democracy_and_the_rule_of_law.pdf.

Access to justice

Access to justice for children is a fundamental right and an essential prerequisite for the protection and promotion of all other human rights.¹³ Ensuring the realisation of this right requires designing justice systems to meet the specific needs of children to enforce all human rights, but the nature and scale of environmental rights violations requires further adaptations.

Recognising that many children will not be in a position to bring legal complaints themselves, whether because of a lack of standing, capacity or resources, adaptations to the legal system are necessary to ensure children's participation through the justice system. Many of these barriers can be addressed by legal systems that take account of the position and needs of children. Standing provisions that eschew strict age limits and incorporate capacity based tests for whether a child is able to instruct a lawyer strike a balance between the fact that many children will need and want support with the recognition that there is no arbitrary age at which children are willing and able to act on their own initiative.¹⁴

Accessing legal advice and representation is a barrier to children accessing justice in all areas of the law, but the power imbalance between children and businesses, exacerbates this barrier. Free legal aid and assistance covering a broad range of criminal, civil, administrative and constitutional cases is vital for overcoming the financial barriers that children will almost always face in bringing a complaint. Provisions explicitly excluding children from paying all costs related to judicial proceedings, such as in Belgium,¹⁵ or excluding parental income from decisions on whether children can access legal aid, such as in Lithuania and Luxembourg,¹⁶ help to overcome some of these barriers. Collective complaint mechanisms and public interest litigation, whether enshrined in the Constitution¹⁷ or exercised through civil litigation for negligence or nuisance,¹⁸ also provide a less onerous means of child claimants bringing complaints without bearing the entire burden of the legal action.

Among the many barriers that children may encounter in accessing an effective remedy in environmental matters, is the burden of proof placed on children, including the need to establish causation. The burden of proof usually lies with victims, not with governments or businesses that use, produce or release hazardous substances that eventually pollute and often harm children. In order to reduce the burden of proof on victims of hazardous substances and wastes, the Special Rapporteur on human rights and hazardous substances recommends that States explore options to better balance the right of victims to justice and

¹³ *Report of the UN High Commissioner for Human Rights: Access to justice for children*, 16 December 2013, A/HRC/25/35, para. 3.

¹⁴ See, for example, Scotland discussed in CRIN, *Rights, Remedies and Representation: A global report on access to justice for children*, February 2016, p. 17.

¹⁵ For discussion, see CRIN, *Access to justice for children: Belgium*, April 2015, p. 14. Available at: www.crin.org/node/41373.

¹⁶ For full details see CRIN's access to justice country reports for Lithuania and Luxembourg, available at: www.crin.org/node/42362.

¹⁷ See, for example, Constitution of Bolivia, Arts.135-136.

¹⁸ See, for example, *Corby Group Litigation v. Corby District Council* [2009] EWHC 1944. Available at: <http://www.bailii.org/ew/cases/EWHC/TCC/2009/1944.html>.

remedy.¹⁹ As recommended by the Special Rapporteur, a recalibration of the burden of proof toward those with greater access to information would help to avoid impunity and promote access to an effective remedy.²⁰

Meaningful access to justice for rights violations committed against children related to environmental damage requires effective complaint mechanisms and remedies to be available against private actors as well as States. The Committee on the Rights of the Child has recognised the obligation of States to adopt reasonable legislative and regulatory measures to ensure that business enterprises do not infringe children's rights.²¹ Beyond establishing this legal framework for accountability, practical reforms must also be implemented to ensure that children's rights are enforceable in practice.

¹⁹ Guidelines of Good practices, SR on Human Rights and Toxics, A/HRC/36/41(2017), para. 106

²⁰ Report of the Special Rapporteur on Human Rights and Toxics on the State's duty to prevent exposure to toxics, 1 Oct. 2019, A/74/Slot no. 48053, retrieved from:
https://www.ohchr.org/Documents/Issues/ToxicWaste/AnnualReports/A_74_slot48053.docx

²¹ 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*, 17 April 2013, CRC/C/GC/16, para. 53.