

**“Enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergenerational justice”**

Submission on behalf of [Child Rights International Network \(CRIN\)](#)

25 May 2023

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**About CRIN**

CRIN is a creative human rights organisation focused on children's rights. We press for rights – not charity – and campaign for a genuine shift in how governments and societies view and treat under-18s.

This submission draws on research from CRIN's [‘Children’s Access to Environmental Justice’](#) project, with research on 43 countries examining:

- How law and policy protects - or fails to protect - children’s environmental rights.
- How children can currently access the courts in environmental cases.
- What courts can do when children’s rights are violated.
- Whether children’s civil and political rights are protected and enforced to ensure children can protest and campaign on environmental justice.

This submission focuses on children’s rights within the context of the Special Rapporteur’s forthcoming report. We have not addressed the issue of intergenerational justice within this submission. The relationship between intergenerational justice and children’s rights is a complex discussion which we felt we could not do justice to within the constraints of this submission. However, if further information on this topic, or indeed, any other topic outlined in the submission or the Children’s Access to Environmental Justice project is needed, we remain available for your assistance.

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**Enhancing Climate Change Legislation**

*Q1: Can you provide examples of climate change legislation that incorporates human rights elements, or a reference to obligations relating to loss and damage?*

The right to a healthy environment is protected in some form within the Constitutions of more than 150 States.<sup>1</sup> The precise form of this protection varies between countries:

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<sup>1</sup> UN Environment Programme, *Human Rights and the Environment*. Available at: <https://wedocs.unep.org/bitstream/handle/20.500.11822/32179/HRE.pdf?sequence=1&isAllowed=y>.

- The “right to a healthy environment” is often explicitly referenced in the Constitution (eg. Mexico<sup>2</sup>, Finland<sup>3</sup>, Senegal<sup>4</sup>, South Africa<sup>5</sup>, Côte d’Ivoire<sup>6</sup>, Belgium<sup>7</sup>, Fiji<sup>8</sup> and more).
- Where no explicit “right to a healthy environment” exists, environmental rights have been inferred through existing protected rights and freedoms (for example, right to life, liberty and security of the person, right to water and access to sanitation) (eg. Canada<sup>9</sup>, New Zealand<sup>10</sup> and Uruguay<sup>11</sup>). However, without clearly identified ‘constitutional principles’ or an explicit codified ‘constitutional’ protection, the courts are likely to be conscious of judicial overreach.<sup>12</sup>
- Legal systems which allow for interpretation of national provisions in light of international human rights treaties and provisions can provide grounds to base a claim challenging a national climate law/policy on a strong reasoning of a human rights violation even where

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<sup>2</sup> Article 4 of the Constitution of Mexico states that “everyone is entitled to an environment suitable for their development and wellbeing” and establishes liability for environmental damage or degradation. Available at: [https://www.constituteproject.org/constitution/Mexico\\_2015.pdf](https://www.constituteproject.org/constitution/Mexico_2015.pdf).

<sup>3</sup> Section 20 of the Constitution of Finland states that “nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.” Available at:

[https://www.constituteproject.org/constitution/Finland\\_2011?lang=en](https://www.constituteproject.org/constitution/Finland_2011?lang=en).

<sup>4</sup> Article 8 of the Constitution of the Republic of Senegal 2001 with Amendments through to 2016 states that “the Republic of Senegal guarantees to all citizens the (...) right to a healthy environment”. Available at: [https://www.constituteproject.org/constitution/Senegal\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Senegal_2016.pdf?lang=en).

<sup>5</sup> Section 24 of the Constitution of South Africa states that “everyone has the right (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.” Available at: <https://www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf>.

<sup>6</sup> Article 27, Côte d’Ivoire Constitution (2016) states that “it is recognised that everyone throughout the national territory has the right to a healthy environment.” Available at:

[https://www.constituteproject.org/constitution/Cote\\_DIvoire\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Cote_DIvoire_2016.pdf?lang=en).

<sup>7</sup> Article 23 of the Belgian Constitution states that “everyone has the right to lead a life in keeping with human dignity”, including “the right to the protection of a healthy environment.” Available at:

[https://www.constituteproject.org/constitution/Belgium\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/Belgium_2014.pdf?lang=en).

<sup>8</sup> Section 40(1) of the Fiji Constitution states that “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.” Available at:

<https://www.laws.gov.fj/Home/information/constitutionoftherepublicoffiji>.

<sup>9</sup> See CRIN, *Children’s Access to Environmental Justice: Canada Report*, (2023), Section I. Available at: <https://home.crin.org/a2j-reports-canada>

<sup>10</sup> See CRIN, *Children’s Access to Environmental Justice: New Zealand Report*, (Forthcoming: 2023), Section I. Available at: <https://home.crin.org/a2j-country-reports>

<sup>11</sup> See, CRIN, *Children’s Access to Justice for Environmental Rights: Uruguay*, (2023), Section I. Available at: <https://home.crin.org/a2j-reports-uruguay>.

<sup>12</sup> For States without a constitution, or an explicit ‘right to a healthy environment’, trying to identify constitutional principles which establish the right to a healthy environment as a fundamental protected right is difficult, particularly when States do not include a mechanism to interpret international law. See CRIN, *Children’s Access to Environmental Justice: Canada Report*, (2023), Section I. Available at:

<https://home.crin.org/a2j-reports-canada>. Also see, CRIN, *Children’s Access to Environmental Justice: New Zealand Report*, (Forthcoming: 2023), Section I. Available at: <https://home.crin.org/a2j-country-reports>

no explicit “right to a healthy environment” exists in the national framework (eg. Uruguay<sup>13</sup>).

Beyond Constitutional protections, legislation related to climate change has incorporated human rights in various ways globally, including in a way that is tailored to the rights of children (eg. Mexico, which explicitly protects the rights of children and adolescents to live in a healthy and sustainable environment within children’s rights legislation<sup>14</sup>).

Other States legislate to protect people’s rights to participate in decision-making processes relating to environmental protection; creating binding obligations on government bodies (eg. Finland<sup>15</sup>, New Zealand<sup>16</sup> and Morocco<sup>17</sup>). In practice, legislation or policy mechanisms which support “youth participation” tend to exclude children by imposing arbitrary age limits on participation, or by not considering the accessibility needs unique to children’s participation.<sup>18</sup>

## Supporting Climate Change Litigation

*Q5: How are human rights considerations being incorporated into climate change litigation?*

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<sup>13</sup> In Uruguay, there is a “general interest” in the environment (Article 47: Constitution) and therefore no explicit “right to a healthy environment”. However, Uruguay’s Constitutional system allows for linking national provisions (with wide interpretative range) with international human rights treaties and provisions (Article 72: Constitution). Since Uruguay is a party to the American Convention of Human Rights (also known as Pacto de San José de Costa Rica) and San Salvador Protocol on Economic, Social and Cultural Rights (Article 11(1): “everyone shall have the right to live in a healthy environment and to have access to basic public services”) then Constitutional provisions like Uruguay’s Article 72 can provide grounds to base a claim challenging a national climate law/policy where the claim is based on a strong reasoning of a human rights violation.

<sup>14</sup> Mexico explicitly protects the rights of children and adolescents to live in a healthy and sustainable environment. See, *Ley General de los Derechos de Niñas, Niños y Adolescentes*. Available at: <https://www.gob.mx/sipinna/documentos/ley-general-de-los-derechos-de-ninas-ninos-y-adolescentes-reformada-20-junio-2018>. Also see CRIN, *Children’s Access to Environmental Justice: Mexico Report*, (Forthcoming: 2023), Section I. Available at: <https://home.crin.org/a2j>.

<sup>15</sup> The Constitution of Finland, Section 2 specifically entails the right of the individual “to participate in and influence the development of society and his or her living conditions.” Available at: <https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>.

<sup>16</sup> The Resource Management Act (‘RMA’) promotes public participation in environmental decision-making by eliminating restrictive rules of standing in both administrative and judicial fora. The RMA permits any member of the public to make submissions to local, regional or national entities regarding policy statements, plans, and notified resource consents.

<sup>17</sup> Article 33 of the Constitution in Morocco promotes youth participation in the social, economic, cultural and political development of the country. A Consultative Council of Youth and of Associative Action is created to this effect. The consultative group is made up of “representatives of the government and civil society” who discuss youth affairs (see [https://www.salto-youth.net/downloads/4-17-3140/def\\_p\\_1-40\\_youth\\_work\\_morocco.pdf](https://www.salto-youth.net/downloads/4-17-3140/def_p_1-40_youth_work_morocco.pdf)). It is unclear whether this Council includes children.

<sup>18</sup> See, CRIN, *Children’s Access to Environmental Justice: Finland Report* (Forthcoming: 2023), Section IV. Available at: <https://home.crin.org/a2j>.

As of May 2022, 2,002 cases<sup>19</sup> of climate change litigation had been identified<sup>20</sup>, filed across 43 countries and before 15 international or regional courts, or tribunals.<sup>21</sup> Not all of this litigation is human-rights based, though an increasing volume of climate litigation addresses the application of human rights.

Regarding children's rights specifically, human-rights focused climate litigation has taken a number of forms.

#### Explicit environmental rights in the Constitution:

- Constitutional rights to the environment are commonly unsystematically used by courts, but depending on the discretion of the courts or judges (e.g. Finland<sup>22</sup>), meaning that constitutional rights to the environment are not deployed in all relevant situations.
- *The 'Deadly Air' Case*<sup>23</sup> and the *Kabwe Lead Poisoning Case*<sup>24</sup> are notable examples from the South African courts where litigators are asserting the constitutional right to an environment promoting health and wellbeing specifically addressing children's rights. The cases also address intergenerational justice and corporate accountability.
- *Demanda Generaciones Futuras v. Ministerio de Ambiente*: A group of 25 young people (aged 7-26 years old) and a supporting NGO<sup>25</sup> sued the Colombian government for allowing the deforestation of the Amazon rainforest, in violation of their fundamental, constitutional rights.<sup>26</sup>

#### Other fundamental human rights as a means to ensure environmental protection:

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<sup>19</sup> As of May 2022.

<sup>20</sup> By the Sabin Centre's Climate Change Litigation Database. Available at: <http://climatecasechart.com/>.

<sup>21</sup> Setzer and Higham, *Global trends in climate change litigation: 2022 snapshot*, (June 2022). Available at: <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/08/Global-trends-in-climate-change-litigation-2022-snapshot.pdf>.

<sup>22</sup> See, CRIN, *Children's Access to Environmental Justice: Finland Report* (Forthcoming: 2023), Section I.B. Available at: <https://home.crin.org/a2j>.

<sup>23</sup> This case lists children among vulnerable groups together with women, youth, people with disabilities, low income groups and elderly people. The court held: "This is a further demonstration that the enduring and unsafe levels of air pollution in the Highveld Priority Area are an ongoing violation of the section 24(a) constitutional rights of residents. This violation necessarily violates other constitutional rights, including the rights to dignity, life, bodily integrity and the right to have children's interests considered paramount in every matter concerning the child." para. 76 of the judgement

(<https://cer.org.za/wp-content/uploads/2022/03/TRUSTEES-JUDGMENT-DATED-18-MARCH-2022-1.pdf>).

For more information, see: <https://cer.org.za/news/deadly-air-pollution-case-back-in-court>.

<sup>24</sup> For more information, see: <https://childrenofkabwe.com/about-the-class-action-suit#legal-proceedings>.

<sup>25</sup> Dejusticia (<https://www.dejusticia.org/>).

<sup>26</sup> "In this decision, the Supreme Court of Justice of Colombia found that the government of Colombia must abate climate change by stopping deforestation in the Amazon. They ruled in favour of 25 youth and found that the Amazon was an entity subject of rights, laying out specific government mandates to achieve net zero deforestation by 2020." Available at:

<http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>.

- In some jurisdictions, cases have addressed the right to life in environmental protection cases (eg. Tanzania<sup>27</sup>, New Zealand<sup>28</sup>, Canada<sup>29</sup>).
- *Daniel Billy and others v Australia (Torres Strait Islanders Petition)*: "A group of eight Torres Strait Islanders, Australian nationals, and six of their children submitted a petition<sup>30</sup> against the Australian government to the UN Human Rights Committee. "In a ground-breaking decision, the UN Human Rights Committee found that Australia's failure to adequately protect indigenous Torres Islanders against adverse impacts of climate change violated their rights to enjoy their culture and be free from arbitrary interferences with their private life, family and home."<sup>31</sup>
- *Mbabazi & Ors v Attorney General*, brought on behalf of 4 Ugandan children, was one of the first rights-based environmental claims in African Courts - invoking the 'Public Trust Doctrine' and testing the Courts on its application of intergenerational equity.<sup>32</sup>

Q7: What do you think are the major barriers to initiating climate change litigation?

Children face serious barriers in accessing justice through the courts, including in the context of climate litigation.<sup>33</sup> Some of these barriers relate to the legal status of children before courts, while others are a consequence of the restrictions on the powers of the courts or the practical challenges of initiating legal action. The financial burden of seeking legal advice, intimidating courtrooms and complex legal procedures can render access to justice for children a fiction in practice.<sup>34</sup>

- Costs and access to legal aid: Children are very unlikely to be in a position to pay for legal advice or representation, yet it is essential if they are to be able to access and rely on justice systems to provide remedies for rights violations. In some countries there is no

<sup>27</sup> See, CRIN, *Children's Access to Environmental Justice: Tanzania Report* (2023). Available at: <https://home.crin.org/a2j-tanzania>.

<sup>28</sup> See CRIN, *Children's Access to Environmental Justice: New Zealand Report*, (Forthcoming: 2023), Section I. Available at: <https://home.crin.org/a2j-country-reports>

<sup>29</sup> See CRIN, *Children's Access to Environmental Justice: Canada Report*, (2023), Section I. Available at: <https://home.crin.org/a2j-reports-canada>

<sup>30</sup> "The [petitioners] are all indigenous inhabitants of [...] four small, low-lying islands in Australia's Torres Strait region. The Islanders claimed that changes in weather patterns have direct harmful consequences on their livelihood, their culture and traditional way of life."

<sup>31</sup> Available at:

<http://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/>.

<sup>32</sup> Brought in 2012, progress has been slow. No further action has been taken on this case since 2017:

<http://climatecasechart.com/non-us-case/mbabazi-et-al-v-attorney-general-et-al/>. See CRIN, *Children's Access to Environmental Justice: Uganda Report*, (2023), Section I.B. Available at:

<https://home.crin.org/a2j-reports-uganda>. Also see,

<http://climatecasechart.com/non-us-case/mbabazi-et-al-v-attorney-general-et-al/>.

<sup>33</sup> See CRIN, *CRC General Comment No.26 Submission*, (2023) for a further breakdown of the barriers that prevent children bringing climate litigation. Available at:

<https://static1.squarespace.com/static/5afadb22e17ba3eddf90c02f/t/6227999bbc86fd10ad050d5b/1646762395552/CRIN+Submission+CRC+General+Comment+No.+26.pdf>.

<sup>34</sup> CRIN, *Remedies and Representation: A Global Report on Access to Justice for Children*, (2016). p10.

Available at: [https://archive.crin.org/sites/default/files/criin\\_a2j\\_global\\_report\\_final\\_1.pdf](https://archive.crin.org/sites/default/files/criin_a2j_global_report_final_1.pdf).

free legal aid provision for environmental cases (eg. Uganda<sup>35</sup>) whilst others impose very high limits on liability for environmental cases meaning the potential costs of litigation are prohibitively high (eg. UK<sup>36</sup>). Instead, children depend on NGOs to access legal support. However, the procedures which enable organisations to take public interest/collective action cases are not consistently available. Less than half of States allow collective litigation in some settings, and around 15% allow collective action across the board. These measures represent an underdeveloped tool with the potential to greatly increase the protection of children's rights. Around a half of States allow NGOs to bring cases in their own name, while a slightly larger majority of 54% permit NGOs the more limited power to intervene in cases that have already been filed. There is also evidence of increasing government control over which NGOs are able to take collective and/or public interest litigation which risks barring access to justice along political lines.<sup>37</sup>

- Lack of Independence and Legal Status: Blanket provisions requiring all people under a certain age to approach the courts through a litigation guardian or similar person are common, while more nuanced rules that take into account the capacity of any particular child approaching the courts are much rarer. This means that children are denied independent access to the courts, and often are reliant on environmental cases being instigated by the person acting as a legal guardian (eg. Uganda<sup>38</sup>).

Restrictive parental consent rules are common and can stymie children's access to the courts. Throughout the Middle East and North Africa this is often a serious problem, where parental legal authority is commonly strictly vested in fathers or grandfathers adding a further discriminatory limit on children's access to courts and other complaints procedures. A small group of 14 States from a range of legal traditions has paved the way in combating these kinds of barriers, explicitly requiring that a child's representative, whoever that may be, act in the best interests of the child.<sup>39</sup>

- Deference to legislatures and the executive in climate litigation: The perception that courts are intruding on the legitimate powers of legislatures or governments can leave

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<sup>35</sup> CRIN, *Children's Access to Environmental Justice: Uganda Report*, (2023), Section II.F. Available at: <https://home.crin.org/a2j-reports-uganda>.

<sup>36</sup> See CRIN, *CRC General Comment No.26 Submission*, (2023). Available at: <https://static1.squarespace.com/static/5afadb22e17ba3eddf90c02f/t/6227999bbc86fd10ad050d5b/1646762395552/CRIN+Submission+CRC+General+Comment+No.+26.pdf>. Also, in 2017, the UK government doubled the limit on liability for individuals bringing cases related to Aarhus Convention claims (that is claims related to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters) which would leave litigants bringing cases in the public interest related to the environment much more vulnerable to financial costs if they were to lose their case. See, Civil Procedure (Amendment) Rules 2017, Amendment of Part 45. Available at: <https://www.legislation.gov.uk/ukxi/2017/95/article/8/made>.

<sup>37</sup> CRIN, *Rights, Remedies and Representation: A Global Report on Access to Justice for Children*, (2016). Available at: [https://archive.crin.org/sites/default/files/clin\\_a2j\\_global\\_report\\_final\\_1.pdf](https://archive.crin.org/sites/default/files/clin_a2j_global_report_final_1.pdf).

<sup>38</sup> CRIN, *Children's Access to Environmental Justice: Uganda Report*, (2023), Section II.C. Available at: <https://home.crin.org/a2j-reports-uganda>.

<sup>39</sup> For example, Bahamas, Bahrain, Bolivia, Costa Rica, Djibouti, Ecuador, Iceland, Iraq, Israel, Kuwait, Romania, Spain, Tanzania, Venezuela. See CRIN, *Remedies and Representation: A Global Report on Access to Justice for Children*, (2016). p4. Available at: [https://archive.crin.org/sites/default/files/clin\\_a2j\\_global\\_report\\_final\\_1.pdf](https://archive.crin.org/sites/default/files/clin_a2j_global_report_final_1.pdf).

judges reluctant to make findings of rights violations and order necessary remedies. For example, in *Lho'imggin et al. v. Her Majesty the Queen*.<sup>40</sup>

- Standing: Requirements that individuals have a particular interest and a failure to allow collective or public interest complaints for all those affected, as well as restrictive procedural rules, can block effective challenges based on the full impact of environmental damage.<sup>41</sup>
- Lack of a general right to access information: The UN Committee on the Rights of the Child has recognised the importance of accessible information for children to enable access to justice<sup>42</sup>, but State approaches vary. In some cases, there are no specific provisions on children's right to access information (eg. Canada, Thailand, Australia, India).<sup>43</sup> Even when this right is recognised in legal provisions, some limitations may

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<sup>40</sup> In the case of *Lho'imggin et al. v. Her Majesty the Queen* (<http://climatecasechart.com/non-us-case/gagnon-et-al-v-her-majesty-the-queen/>) two houses of the Wet'suwet'en Indigenous group filed a legal challenge in February 2020 alleging that the Canadian government's approach to climate change violated their constitutional and human rights. The State of Canada (the Defendant) filed a motion to strike out the case which was granted by the Federal Court without leave to amend on the grounds that the case was not justiciable, had no reasonable cause of action and the remedies were not legally available. The Court took a restrictive approach to remedies and wrote that, "the issue of climate change, while undoubtedly important, is inherently political, not legal, and is of the realm of the executive and legislative branches of government" [77]. The Court further found that because plaintiffs did not reference specific sections of laws that caused specific breaches of Charter rights, their claims presented no reasonable cause of action. With regard to remedies, the Court found that the multifaceted problem of climate change would make judicial supervision meaningless, and therefore the Court could not take on a supervisory role to ensure adequate laws were passed. The Applicant appealed to the Federal Court of Appeal and provided a memorandum of fact and law. The case is pending.

<sup>41</sup> For example, in Canada legal challenges must be tied to a specific procedural instrument. See CRIN, *Children's Access to Environmental Justice: Canada Report*, (2023). Section II.B. Available at: <https://home.crin.org/a2j-reports-canada>.

<sup>42</sup> UN Committee on the Rights of the Child, *General Comment No. 25 (2021) on children's rights in relation to the digital environment*, CRC/C/GC/25, para. 49. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F25&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F25&Lang=en).

<sup>43</sup> See, CRIN, *Children's Access to Environmental Justice Project*. Available at: <https://home.crin.org/a2j>.

apply for children (eg. Japan<sup>44</sup>, Uganda<sup>45</sup>, South Africa<sup>46</sup>, Senegal<sup>47</sup>, Tanzania<sup>48</sup>). Children also experience lack of connectivity (eg. Mexico<sup>49</sup>), poverty (eg. Egypt<sup>50</sup>) and lack of access to education (eg. Senegal<sup>51</sup>, Egypt<sup>52</sup>) which prevents proper access to information.

- Lack of financial and human resources to ensure provision of children's rights in national law and policy: Generally, this is also accompanied with a lack of consideration of children's rights in climate change mainstreaming into the priorities of the government (eg. Senegal<sup>53</sup>).
- Right of a child to be heard in legal proceedings: This is an integral part of ensuring access to justice for children - a court can only protect a child's interests if it is able to find out what they are - yet a fifth of the world's children do not have the legal right to be heard in legal proceedings that concern them. A little over a quarter of countries guarantee this right to children in all legal settings, 84 countries enshrine the standard in

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<sup>44</sup> See, *Gifu Prefectural Ordinance for the Protection and Development of Youths* (Supreme Court of Japan Third Petty Bench judgement (19.9.1989). This case, although not related to environmental rights, considered access to information for children. The Court held that children's rights to access information can be restricted as compared to adults because the full right to access information is designed to be provided to a person who has knowledge, information and an ability to filter the right information for themselves: ("the degree of the guarantee [of the freedom to know] for youths must be said to be lower compared to that for adults"). The Gifu case has been criticised by constitutional scholars, but the court has since upheld several other ordinances of a similar nature using the same logic (see, IDA Atsuhiko, *Constitution of Japan and the Youth: The Human Rights of Minors*, (2022). Available at:

<sup>45</sup> Article 4(1)(c) of the Children Act (2016): "every child shall have the right to access any information to which a parent, guardian or other person in authority deems critical to the child's wellbeing." Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104395/127307/F-171961747/UGA104395.pdf>.

<sup>46</sup> CRIN, *Children's Access to Environmental Justice: South Africa Report*, (2023). Available at: <https://home.crin.org/a2j-south-africa>.

<sup>47</sup> CRIN, *Children's Access to Environmental Justice: Senegal Report*, (2023), Section IV: Access to Information. Available at: <https://home.crin.org/a2j-reports-senegal>. "The ability of children to access information, including social media, online services and other sources of information (such as education more generally) is still limited."

<sup>48</sup> CRIN, *Children's Access to Environmental Justice: Tanzania Report*, (2023). Available at: <https://home.crin.org/a2j-tanzania>.

<sup>49</sup> CRIN, *Children's Access to Environmental Justice: Mexico Report*, (Forthcoming: 2023), Section IV. Available at: <https://home.crin.org/a2j>

<sup>50</sup> The Committee on the Rights of the Child has identified persistent obstacles to children gaining access to information, among which it identified poverty and illiteracy. The CRC stated that "children's access to information and their right to freedom of expression remain insufficient". CRC/C/Egy/3-4, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/EGY/CO/3-4&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/EGY/CO/3-4&Lang=En).

<sup>51</sup> See CRIN, *Children's Access to Environmental Justice: Senegal Report*, (2023), Section IV. Available at: <https://home.crin.org/a2j-reports-senegal>

<sup>52</sup> CRC/C/Egy/3-4, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/EGY/CO/3-4&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/EGY/CO/3-4&Lang=En).

<sup>53</sup> For example, in Senegal there is no provision for children's rights in the Senegal National Adaptation Plan. Similarly, analysis of the Sectoral Development Policy Letters ("LPSD"), which define the priorities of the government in the sector for a period of 5 years with an implementation budget, shows a lack of consideration of children's rights and gender equity in climate change mainstreaming. See CRIN, *Children's Access to Environmental Justice: Senegal Report*, (2023). Available at: <https://home.crin.org/a2j-reports-senegal>.



more limited circumstances while 58 countries do not recognise children's right to be heard in their legislation.<sup>54</sup>

- Prosecution/Threats/Reprisals and Intimidation: Children who express their views or engage in climate litigation and/or related public protests may face threats, intimidation, harassment or other serious reprisals (eg. Mexico<sup>55</sup>).
- Burden of Proof: 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. The Special Rapporteur on toxics and human rights recommends that States explore options to better balance the right of victims to justice and remedy,<sup>56</sup> recommending a recalibration of the burden of proof toward those with greater access to information to help avoid impunity and promote access to an effective remedy for victims.<sup>57</sup> The burden of proof can be reversed in environmental cases (eg. Brazil<sup>58</sup>) and courts can interpret the law around burden of proof in a way that promotes environmental protection (eg. Thailand<sup>59</sup>). The challenges that arise from demonstrating harm caused by widespread or diffuse exposure of children to toxic substances through environmental pollution can also be addressed in part through precautionary measures, rather than "risk-management" when there is insufficient information that exists to calculate the risks.<sup>60</sup>

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<sup>54</sup> CRIN, *Rights, Remedies and Representation: A Global Report on Access to Justice for Children*, (2016). p4. Available at: [https://archive.crin.org/sites/default/files/clin\\_a2j\\_global\\_report\\_final\\_1.pdf](https://archive.crin.org/sites/default/files/clin_a2j_global_report_final_1.pdf).

<sup>55</sup> CRIN, *Children's Access to Environmental Justice: Mexico Report*, (Forthcoming: 2023). Available at: <https://home.crin.org/a2j>. In Mexico, Indigenous Mayan youth brought a constitutional challenge against an industrial hog farming operation in the Yucatan Peninsula. Local news reported that the children involved in this case were threatened. See, for example, "Amenazan a guardiana de cenotes de Homún que lucha contra mega granja porcícola" (EDUCA Servicios para una Educación Alternativa, 2022), <https://www.educaoaxaca.org/amenazan-a-guardiana-de-cenotes-de-homun-que-lucha-contra-mega-granja-porcicola/>; Sare Frabes, "Amenazan infancia que defiende los cenotes en Homún", (Avispa, 2022), <https://avispa.org/amenazan-a-infancia-que-defiende-los-cenotes-en-homun/>; Fanny Miranda, "Acusan amenazas contra defensora de cenotes y opositora a granjas porcícolas en Yucatán", (Milenio, 2022), <https://www.milenio.com/politica/amenazan-defensora-cenotes-opositora-granjas-porcicolas>; Raúl Durán, "Una defensora de Homún recibió amenazas contra ella y sus hijos por oponerse a una mega granja de cerdos" (Debate, 2022), <https://www.debate.com.mx/estados/Amenazan-a-defensora-de-cenotes-de-Homun-y-a-sus-hijos-en-Yucatan-20220406-0227.html>.

<sup>56</sup> Guidelines of Good practices, SR on Human Rights and Toxics, A/HRC/36/41 (2017), para. 106. Available at:

<https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights/guidelines-good-practices-disposal-toxics>.

<sup>57</sup> 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](https://www.ohchr.org/Documents/Issues/ToxicWaste/AnnualReports/A_74_slot48053.docx).

<sup>58</sup> See CRIN, *Children's Access to Justice for Environmental Rights: Brazil*, (2022). Available at: <https://home.crin.org/a2j-brazil>.

<sup>59</sup> See CRIN, *Children's Access to Justice for Environmental Rights: Thailand*, (2022). Available at: <https://home.crin.org/a2j-thailand>. The Supreme Court the Supreme Court recently shifted the burden of proof to the defendant in a water pollution claim.

<sup>60</sup> Report of the Special Rapporteur on the implications of human rights of the environmentally sound management and disposal of hazardous substances and wastes, A/HRC/33/41, 2 August 2016, para.

- **Limitation Periods:** Strict time limits on when a case must be submitted can present a serious barrier to children accessing remedies, particularly for young children who may not be able to approach the courts until they have reached the age of majority.<sup>61</sup> Gathering evidence for environmental litigation that can incriminate a perpetrator or which establishes causation of a given illness may be more difficult after a substantial period of time has passed. The challenge is particularly obstructive in cases where adverse health effects of an environmental problem manifest many years after exposure, and when a health problem becomes hereditary.<sup>62</sup>

*Q8: Are the barriers different in different parts of the world? What are they?*

See Q7.

*Q11: Are there particular issues with getting access to the courts?*

See Q7.

### **Advancement of the Principle of Intergenerational Justice**

*Q17: Can you share some good practices that allow youth to be represented in courts and to have their views and concerns properly expressed in the judicial process?*

Children and young people constitute more than one quarter of all plaintiffs in rights-based strategic climate litigation cases filed globally up to 2021.<sup>63</sup> While children are faced with significant barriers to accessing justice, these are not necessary or insurmountable barriers. CRIN has set out a vision of a ‘Utopian State’ which sets out to match the international standards against the effective ways that the issues regarding children’s access to justice and the courts have been tackled by countries from different legal traditions and cultures.<sup>64</sup> This tool intends to set out how to improve children’s access to justice around the world and to share effective practices that already exist to achieve this. For example:

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43. Available at:

<https://www.ohchr.org/en/documents/thematic-reports/ahrc3341-report-rights-child-and-hazardous-substances-and-wastes>.

<sup>61</sup> CRIN, *Rights, Remedies and Representation: A global report on access to justice for children*, (2016). Available at: [https://archive.crin.org/sites/default/files/crin\\_a2j\\_global\\_report\\_final\\_1.pdf](https://archive.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf).

<sup>62</sup> CRIN, *Rights, Remedies and Representation: A global report on access to justice for children*, (2016). Available at: [https://archive.crin.org/sites/default/files/crin\\_a2j\\_global\\_report\\_final\\_1.pdf](https://archive.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf).

<sup>63</sup> Elizabeth Donger, *Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization*, *Transnational Environmental Law*, 11(2), 263-289 (2022). Available at: <https://www.cambridge.org/core/journals/transnational-environmental-law/article/children-and-youth-in-strategic-climate-litigation-advancing-rights-through-legal-argument-and-legal-mobilization/7B3C59B37A7708495D16687073C95B25>.

<sup>64</sup> CRIN, *Rights, Remedies and Representation: A Global Report on Access to Justice for Children*, (2016). p35. Available at: [https://archive.crin.org/sites/default/files/crin\\_a2j\\_global\\_report\\_final\\_1.pdf](https://archive.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf).

Standing: The Philippines<sup>65</sup> and Colombia<sup>66</sup> have explicitly and effectively empowered children to bring cases to assert their environmental rights. Cases brought by children and young people are pending in Peru<sup>67</sup> and South Korea<sup>68</sup>. In Costa Rica, the *amparo* cause of action has been construed very broadly to allow any person (including children) to file a case regarding the protection of their constitutional rights, including environmental rights.<sup>69</sup> In Pakistan, during the case of *Ali v. Federation of Pakistan*, the High Court established the right of a child to file a legal petition in the interest of the public at large through an attorney, setting precedent for the lower courts.<sup>70</sup>

Costs: Free legal aid, advice and representation for children, and protective cost orders, which limit the financial risk to a person who brings a case in the public interest, are just some of the mechanisms States can use to mitigate the financial barriers for children bringing climate litigation (eg. Brazil<sup>71</sup>).

Limitation Periods: It is common for limitation periods to be explicitly relaxed in certain types of proceedings, particularly where delay in bringing a case is not the fault of the victim, where the harm is particularly severe or where it may take time for the harm suffered to become evident. In Slovakia there is no statute of limitations on civil claims for harm to a person's health.<sup>72</sup> In Brazil, the federal law does not provide for specific time bars regarding criminal or administrative liability in environmental claims and courts have recognised that there are no limitation periods regarding the civil remediation of environmental damage.<sup>73</sup>

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<sup>65</sup> CRIN, *Children's Access to Environmental Justice: Philippines Report (2022)*. Available at: <https://home.crin.org/a2j-philippines>.

<sup>66</sup> *Future Generations v. Ministry of the Environment and Others*. Available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/future-generation-v-ministry-environment-others/>. In this case, the children involved were represented by their parents.

<sup>67</sup> *Álvarez et al v. Peru*. Available at: <http://climatecasechart.com/non-us-case/alvarez-et-al-v-peru/>. In this case, the children involved were represented by their parents.

<sup>68</sup> *Do-Hyun Kim et al. v. South Korea*. Available at: <http://climatecasechart.com/non-us-case/kim-yujin-et-al-v-south-korea/>.

<sup>69</sup> See, CRIN, *Children's Access to Environmental Justice: Costa Rica Report*, (Forthcoming: 2023). Available at: <https://home.crin.org/a2j>.

<sup>70</sup> *Ali v. Federation of Pakistan*: Rabab Ali, at 7 years old (14/15 years old now), filed a climate change challenge against the Pakistani Government for continuing to promote fossil fuels which she argued violated the public trust doctrine and the youngest generation's fundamental constitutional rights to life, liberty, property, human dignity, information, and equal protection of the law. The challenge was filed through her father and pro bono environmental attorney Qazi Ali Athar, and on behalf of all of the Pakistani people. Although the result of this case is pending, the Higher Court in the case of *Ali v Federation of Pakistan* established the right of a child to file a legal petition in the interest of the public at large through an attorney which is a first in Pakistan and sets precedent for the lower courts. Available at: <http://climatecasechart.com/non-us-case/ali-v-federation-of-pakistan-2/>.

<sup>71</sup> For example, Brazil allows "any citizen" to bring a popular action to "annul an act injurious to... the environment" with the burden of paying "the prevailing party's attorney's fees and costs" removed. See CRIN, *Children's Access to Justice for Environmental Rights: Brazil Report*, (2022). Available at: <https://home.crin.org/a2j-brazil>.

<sup>72</sup> Civil Code of the Slovak Republic, Article 106.

<sup>73</sup> See CRIN, *Children's Access to Justice for Environmental Rights: Brazil Report*, (2022). Available at: <https://home.crin.org/a2j-brazil>.