

STATEMENT OF THE INTERNATIONAL DEVELOPMENT LAW ORGANIZATION

CHILDREN'S RIGHTS AND THE ENVIRONMENT

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The International Development Law Organization (IDLO) presents this submission to the UN Committee on the Right of the Child as part of the preparatory process for the 2016 Day of General Discussion.

Environmental deterioration and climate change are existential threats to the health, human rights and wellbeing of all children. Children's rights to live in a clean and safe environment, to access nutritious food and safe drinking water and to survive and develop healthily are being violated every day. In addition, rights of future generations are being ignored, compromising future benefits and opportunities that can be derived from healthy and diversified eco-systems.

While progress has been achieved in recognizing environmental protection on the basis of other rights¹, little attention is still being paid to the child rights aspect of environmental degradation, while children often face greater impact.

Environmental harm directly and indirectly affects every child's right to survival, protection and development, including through:

- Increased risk of illness and malnutrition
- Increased risk of injury or death
- Negative impact on psychological and social development.

In addition to those environmental risks, social and economic determinants, including growing social inequalities, also have an influence on the impact of environmental harm, climate change and biodiversity loss on children.

In his report to the 31st session of the UN Human Rights Council, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment recognized that "States have an overarching obligation not to discriminate in the application of their environmental laws and policies. In addition, States have heightened duties with respect to members of certain groups that may be particularly vulnerable to environmental harm, including women, children and indigenous peoples".² This position was further recognized in the 2015 in the Paris Agreement which

¹ Right to life, health, food, water and sanitation, property, housing, live life in dignity, freedom and equality, livelihood, etc. UN High Commissioner for Human Rights (2011): Analytical study on the relationship between human rights and the environment, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-34_en.pdf

² (see A/HRC/25/53, paras. 69-78). As the Human Rights Council has stated, the effects of climate change are felt most acutely by those who are already in vulnerable situations. Usually, the most vulnerable have also done the least to contribute to the problem. In this regard, climate change is inherently discriminatory." http://www.ohchr.org/Documents/Issues/Environment/A.HRC.31.52_AEV.docx

acknowledged that “climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”

In this, and other documents, the international community has recognized that climate change is fundamentally an intergenerational problem where actions of today’s generation affect those of future ones, making intergenerational justice and equity issues that require urgent attention.

The contribution of the rule of law

The role of law, and the rule of law, are crucial to address these challenges. Without adequate legal frameworks that are implemented and enforced by effective and responsive institutions, fundamental human rights - including children’s rights - are at risk and ecosystems are exposed to abusive exploitation.

Legal frameworks are important instruments for encouraging and regulating responsible natural resource management and environmental protection, as well as for ensuring the participation of affected communities. Importantly, dedicated commissions and other mechanisms can assist law-making institutions in ensuring that the needs of future generations are respected and taken into account, and that justice institutions have the capacity and resources to adjudicate sustainable development disputes which can be technically complex, including climate change, biodiversity, and natural resource laws and regulations.

Responsible environmental stewardship also requires that institutions be held accountable through legal mechanisms with the aid of civil society. The poor and marginalized groups, including children and youth, indigenous communities and women, must be empowered to demand action when their environment is spoiled, their livelihoods stolen, and their land and water rights violated. To this end, the rule of law enables legal enforcement mechanisms that include effective local regulations based on environmental and social impact assessments, participation of local communities and indigenous peoples in the development of environmental regulations or investment incentives, judicial capacity to properly adjudicate land use laws and regulations, approaches to empower people to manage their environmental endowments, and better monitoring of environmental protection and sustainable use of natural resources.

Implementation of the Sustainable Development Goals set out in the new ambitious *2030 Agenda for Sustainable Development* will require integrated national approaches capable of achieving development co-benefits.

- Setting the standards and institutions for equitable development and protection of children's rights

Meaningful protection of children's rights requires robust legal frameworks, aligned with international standards and enforced through strong mechanisms. Laws can counter discrimination and protect children from the effects of environmental harm, such as malnutrition or lack of access to safe drinking water.³ To cement these legal advances and development gains, there is a need for effective and capable institutions – accessible to children and youth – that can be held accountable through strong judicial responses and the aid of civil society, to protect children's fundamental rights from harms associated with environmental degradation and provide them with equitable and just remedies.⁴

In Argentina, an action was filed by the Public Defender of Minors of Neuquén, to protect the health of indigenous children and youths exposed to drinking water contaminated with lead and mercury. The Court ordered that 250 liters of drinking water per person were to be delivered each day to the community until the government resolved the contamination problem. The decision hinged on the acknowledgement that the government, although fully aware of the problem, had not taken reasonable measures to address it.⁵

In India, a decision by the Supreme Court impacted children victims of recurrent famines and starvation in drought-affected regions. The human rights organization People's Union for Civil Liberties argued that the right to life under the Constitution includes the right to food, which in turn entails a state obligation to provide food to people in drought-affected areas who cannot purchase or produce it themselves. The Court acknowledged that inefficiencies and failure to implement existing legislation, rather than lack of resources, were the root causes of the problem and issued several interim orders requesting the government to implement existing policies, schemes and legislation, and detailing measures to be taken, especially in relation to vulnerable groups, to ensure implementation. The Supreme Court added that "mere schemes without any implementation are of no use".⁶ Such decisions have a critical impact for children living in countries already experiencing the effects of climate variability.

³ International Development Law Organization, *Realizing the Right to Food: Legal Strategies and Approaches*, IDLO (2015), available from <http://idlo.int/publications/realizing-right-food-legal-strategies-and-approaches>. Children's right to food is included in Constitutions from Cuba, Guatemala, Honduras, Panama and Paraguay. Colombia's constitution which states that "children have the fundamental right to life, integrity, health and social security, and adequate food" or South Africa's constitution providing that children have the rights to "basic nutrition, shelter, basic health care services and social services"

⁴ International Development Law Organization, *Doing Justice to Sustainable Development: Integrating the Rule of Law into the Post-2015 Development Agenda*, IDLO (2014), available from www.idlo.int/publications.

⁵ International Development Law Organization, *Realizing the Right to Food: Legal Strategies and Approaches*, IDLO (2015), available from <http://idlo.int/publications/realizing-right-food-legal-strategies-and-approaches>.

⁶ International Development Law Organization, *Realizing the Right to Food: Legal Strategies and Approaches*, IDLO (2015), available from <http://idlo.int/publications/realizing-right-food-legal-strategies-and-approaches>. Through interim orders, the court transformed the government food schemes in question into legal entitlements provided by a constitutionally protected right to food and the beneficiaries of these programs into "stakeholders of justiciable rights."

- Promoting fair rules and a more equitable sharing of benefits through innovative legal frameworks

In recent years, many countries have ratified international agreements and adopted legislation that forbids harmful practices and regulates utilization of natural resources. Despite this progress, governments, corporations and individuals continue to engage in activities that damage ecosystems, over-exploit natural resources and threaten sustainable economic growth and decades of development progress.⁷ Learning from past experiences, laws should move away from ‘band-aid’ solutions to address root causes, combining the banning of harmful practices with the introduction of approaches that reduce inequality and bring about transformative change to protect children’s rights and the rights of future generations.⁸ Legal frameworks addressing environmental issues need to be designed to ensure outcomes are just and equitable, in order to fulfil the 2030 Agenda’s commitment to “leave no one behind”, when it comes to children’s rights to survival, protection, and development, which includes enjoyment and benefit from biodiversity and ecosystems. This opens new opportunities to define new and innovative laws and policies that bridge sectoral and cross-sectoral approaches to sustainable development.⁹

For instance, the Nagoya Protocol to the Convention for Biological Diversity ensuring access to genetic resources and the fair and equitable sharing of benefits arising from their utilization¹⁰ is protecting traditional knowledge for future generations while providing a sustainable framework for research and innovation. It is resulting in new legal and policy frameworks that protect the rights of indigenous people and their children, to act as stewards of their environmental endowments, ensuring their free, prior informed consent in decision making and natural resources management.

In many Latin American countries like Ecuador, Colombia, Peru and Bolivia, laws have been passed establishing new mechanisms for payment for ecosystem services (PES),¹¹ aiming to offer economic incentives to foster more efficient and sustainable use of ecosystem services. These PES also have the indirect impact of reducing poverty while providing incentives for local communities to benefit economically from preserving ecosystems. As an example, water funds are increasingly being used which provide direct and indirect benefits to children and their communities: more diversified sources of incomes resulting in increased food security, environmental education programs for children and educational infrastructure.¹²

⁷ Secretariat of the Convention on Biological Diversity, Global Biodiversity Outlook 4, Montréal (2014).

⁸ IDLO A new Generation of Laws: Using justice, law and empowerment to achieve better biodiversity outcomes <http://www.idlo.int/what-we-do/sustainability/biodiversity>.

⁹ IDLO Connecting the dots across the SDGs: Environment, Justice and People - *What can we learn from biodiversity mainstreaming?* <http://www.idlo.int/what-we-do/sustainability/biodiversity>

¹⁰ The Nagoya Protocol entered into force in November 2014.

¹¹ The term PES is used to describe schemes in which the beneficiaries, or users, of ecosystem services provide payment to the stewards, or providers, of ecosystem services (see <https://www.cbd.int/financial/pes/unitedkingdom-bestpractice.pdf>). The key characteristic of PES deals is a focus on maintaining a flow of a specified ecosystem “service” – such as clean water, biodiversity habitat, or carbon sequestration capabilities – in exchange for something of economic value (see http://www.unep.org/pdf/PaymentsForEcosystemServices_en.pdf).

¹² Rebecca L. Goldman and others, ‘Water funds and payments for ecosystem services: practice learns from theory and theory can learn from practice’, *Fauna & Flora International, Oryx*, 46(1), 55–63 (2012), available from: https://woods.stanford.edu/sites/default/files/files/WaterFundPayments_O.pdf. See also: International Development Law Organization, *Sustainable Water Management: Compendium of Legal Best Practices*, IDLO (2012), available from: <http://www.idlo.int/publications/sustainable-water-management>.

- Supporting access to justice and allowing access to information and the freedom to participate and express opinions, to facilitate children’s meaningful participation in environmental decision-making

Children have the right to express their views freely in all matters affecting them. However, children and youth are seldom consulted on environmental issues or given opportunities to participate meaningfully. Exclusion of young people from public policy-making and decision-making means a huge reservoir of knowledge is lost to the processes. As stated in Principle 10, adopted in 1992 as a part of the Rio Declaration: “Environmental issues are best handled with participation of all concerned citizens, at the relevant level.”¹³ Principle 10 sets out three fundamental rights: access to information, access to public participation and access to justice, as key pillars of sound environmental governance – all of which are relevant to children and youth. The most recent negotiations on the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean recognize the needs of youth.¹⁴

Children’s public participation in environmental and sustainability decision-making often needs to be supported by legally-protected access to information. In many countries, laws to ensure freedom of information, even if simply to facilitate information for children about pollution levels in their homes and communities, or to ensure local people are informed about proposed natural resources development plans, are still lacking.¹⁵

Many countries have passed new regulations systemizing the use of Environmental Impact Assessments (EIA) for new policies and projects, yet gaps remain as there are very limited examples of EIAs referring specifically to children’s rights and inter-generational justice. Public participation in these assessments, even where legally mandated, is still weak and patchy and rarely involves children. These assessments are not always combined with the specific requirement to consider social impact, resulting in inconsistency in the inclusion of the protection of children’s rights and welfare at the planning stage and gaps in ensuring that the needs of future generations are respected and taken into account. As a result, children from poorer countries and of poorer families within wealthier countries face environmental injustice which are frequently cases of cumulative impacts of environmental inequalities.¹⁶

¹³ Principle 10: “Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

¹⁴ http://repositorio.cepal.org/bitstream/handle/11362/39051/S1600429_en.pdf?sequence=7

¹⁵ International Development Law Organization, *Doing Justice to Sustainable Development: Integrating the Rule of Law into the Post-2015 Development Agenda*, IDLO (2014), available from <http://www.idlo.int/publications/doing-justice-sustainable-development>.

¹⁶ Carolyn Stephens and others, ‘Addressing Environmental Inequalities: Cumulative Environmental Impacts’, Environment Agency (2007), available from:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291062/scho0507bmrw-e-e.pdf.

Children from poorer countries and of poorer families within wealthier countries experience less healthy living, ambient and learning environments. For example, a new road development through a low-income community may have direct impacts on the community in terms of a potential increase in air pollution and pedestrian road traffic injuries. In the UK, a good example is provided by transport policy and impacts on disadvantaged children. Thus, rates of pedestrian road traffic injuries (RTIs) for children in social class 5 are five times higher than for children in social class 1 (Acheson et al. 1998). This can be, and has been, described as an inequality (Acheson et al. 1998). To some, this in itself is an injustice. However, arguably this inequality becomes an injustice when evidence shows that these children are from low income families, themselves without motor vehicles and living by busy roads often used by higher income people (Stephens et al. 1998, Stephens et al. 1999).

Recommendations

1. The rule of law empowers the most vulnerable by giving them a voice in law-making, and allows them to hold institutions accountable for delivering rights and services, while creating avenues of redress when services are denied and rights violated.

Concrete actions in this area include:

- Support **specialized and responsive justice sector professionals** and civil society groups and legal mechanisms to provide legal representation to safeguard the rights and interests of children in relation to the environment.
- **Include safeguards in legal frameworks** for maximizing the protection of the environment and children's rights while minimizing negative impacts and encourage change in behaviors.¹⁷

2. Combating environmental harm, climate change and biodiversity loss, and their tremendous impact on children's health and welfare, calls for change in attitudes of institutions and individuals. Reinforcing the rule of law not only set out the processes and pathways to sustainability, but also the social conditions for people to take those steps towards a new vision.

Concrete actions in this area include:

- Create **incentives to prioritize long-term sustainability**, by under-taking cost-benefit analysis and implementing the precautionary principle when developing policies, to integrate the rights of children and future generations and increase accountability.
- Increase representation of children's and future generations' interests in political processes by **creating or expanding institutions' mandates**, such as the Commission for Future Generations (Israel), Commission for Future Generations (Hungary), the 'Congress for the Future' (UK) and the Commission for Sustainable Development and Rights of Future Generations (Tunisia).¹⁸

3. Commitments and obligations regarding the rights of children, which have been reinforced by Agenda 2030, will become truly transformative only when words are converted into actions that include the needs and engagement of young people.

Concrete actions in this area include:

- **Educating children and raising awareness** through child-friendly information equipping them with the knowledge and skills about their rights and means to claim them.

¹⁷ United Nations Children's Fund and the Danish Institute for Human Rights, 'Children's rights in impact assessments: a guide for integrating children's rights into impact assessments and taking action for children, UNICEF (2013), available from: http://www.unicef.org/csr/css/Children_s_Rights_in_Impact_Assessments_Web_161213.pdf.

¹⁸ United Nations Children's Fund UK, 'A brighter tomorrow: climate change, child rights and intergenerational justice' UNICEF (n.d.), available from: <https://www.unicef.org.uk/Documents/Publications/intergenerationaljustice.pdf>; (see also: <https://www.worldfuturecouncil.org/>). 'Implementing Tunisia's New Constitution: Requirements and Roadmap' <http://www.constitutionnet.org/news/implementing-tunisia-new-constitution-requirements-and-roadmap>

- Develop innovative mechanisms to allow children to be recognized as stakeholders with a **right to be heard and included in decision making**, including youth campaigners increased participation in UNFCCC and CBD COP,¹⁹ and to be consulted in the design and delivery of projects related to climate adaptation, disaster risk reduction, biodiversity conservation, benefits sharing, etc.

The International Development Law Organization (IDLO) enables governments and empowers people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.

¹⁹ Global Youth Biodiversity Network (see: <https://gybn.org/call-for-applications-cop13/>); and United Nations Joint Framework Initiative on Children Youth, and Climate Change (see: https://www.wmo.int/youth/sites/default/files/youth_pub_2013_en_m.pdf).