Protecting Environmental Child Rights
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Children have a right to a healthy environment!

Publisher’s foreword

The last few decades have seen a huge rise in public awareness regarding the causes and effects of human-induced environmental degradation. Worldwide, people are experiencing the negative impact of water and food shortages, soil, air and water pollution or natural disasters. Environmental pollution frequently crosses borders and is even felt at the global level, as in the case of climate change. The costs are borne, above all, by those who can least protect themselves: the children of today and tomorrow! Already many children, particularly in developing countries, are prevented from growing up in a healthy environment: every year three million under-five-year-olds die of environment-related illnesses. That is more than one in three deaths among children. At the same time the ruthless exploitation of natural resources, the loss of biodiversity and other irrevocable ecological damage darken children’s future prospects. Young people are doubly punished since, today and as adults, they have to live with the consequences of environmental degradation. It is amazing that – although future generations will have to pay for the unscrupulous handling of nature – their interests, rights and voices usually go completely unheard in the world of politics and business. terre des hommes seeks to change that and sees children as central actors in changing environmental awareness and learning how to adopt an environmentally friendly lifestyle.

Children’s rights direct the focus of environmental and sustainability policy to the unequal power relations that exist between children and adults, between industrialised and developing countries, between rich and poor. Yet, in many areas, we observe the lack of legal and institutional preconditions required for meeting the human rights challenges arising from ecological damage in the 21st century.

terre des hommes wishes to contribute to a change of perspective, focusing more attention on the interdependence of environmental and child rights protection. In 2011, we therefore launched a campaign on environmental child rights. This study shows how rights enshrined in the existing human rights instruments, above all the Convention on the Rights of the Child, can contribute to effective environmental protection. It also makes clear that we cannot meet the ecological challenges facing us today without strengthening the normative and institutional foundations of child rights protection. The threat to child rights caused by environmental degradation has taken on such dimensions that there is now a good case for the international recognition of a universal right to a healthy environment!

Danuta Sacher
Chair of the Executive Board
terre des hommes Germany
The relevance of environmental child rights today
An introduction

Every child has the right to grow up in a safe environment, to lead a healthy life and develop positive future prospects. This definition of “ecological” child rights was introduced back in 1999 by the National Coalition for the Implementation of Children’s Rights in Germany. Its aim was to draw attention to the relationship between child rights and the environment. In fact, the definition points to the function that lies behind all child rights: to guarantee that children can develop and thrive.

A healthy environment is a precondition for children’s physical and mental health. Without it they cannot grow up and become healthy members of society. Children are curious and want to explore their natural surroundings; in so doing, they gain a feeling for themselves and their environment (life world).

Unfortunately this fundamental right of children to a healthy environment is today being violated a million times over: owing to environmental degradation and the exploitation of nature, countless children have no access to clean drinking water or to safe food. Many children suffer under environmentally unacceptable living conditions and are constantly exposed to pollution harmful to health. The opportunity to grow up in a healthy and safe environment is extremely unjustly distributed: between North and South, rich and poor. Without a realignment of political, legal and economic conditions this situation will not fundamentally change. On the contrary, the increasing exploitation of natural resources and degrading or destruction of ecosystems will make a healthy environment a scarce commodity, which very few children will be able to enjoy in future.

This makes it absolutely necessary to focus more attention on the environmental dimensions of protected child rights and, conversely, to strengthen the role of child rights in environmental, sustainability and other relevant policy. Environmental threats to children’s rights must be identified, taking into account children’s specific needs and vulnerabilities, their dependence and marginalisation. Obligations of states and violations of rights must be made more visible to the general public. The environmental aspects of child rights must be strengthened wherever existing standards of protection are inadequate.

The Convention on the Rights of the Child, with its holistic approach to development, offers numerous entry points for strengthening environmental children’s rights. Articles 24 and 29 contain explicit references to the environment, while many other child rights, above all social rights, have strong environmental dimensions or may be reinterpreted from an environmental perspective. It turns out that the claim to environmental child rights is already rooted in the Convention, since without the right to a healthy environment it is impossible to realize the rights to food, water, health etc – now and in the future. The Convention’s participatory rights also play an outstanding role for environmental protection. The voices of children must be heard because policy-making on climate or biodiversity is about their future. They will also “inherit the responsibility of looking after the earth”: in the worst case they will encounter an environment offering them extremely limited opportunities for their life and development. Children are in a very similar position to still unborn future generations. They will have to cope with the earth that we have left them, without themselves having an effective means of control. When taking normative and institutional protective measures, decision-makers must give urgent consideration to how strongly future generations will depend on decisions of generations alive now. Environmental child rights and the rights of future generations have the same goal: to enable scope for development and self-determination, i.e. for promising future prospects.

The present study is intended to encourage and show the way towards strengthening environmental child rights. Chapter 1 gives a short historical review of the development of human rights and environmental protection, which ran in parallel for a long time. Chapter 2 deals with the environmental aspects of protected child rights and ends with the proposal to strengthen child rights in the long term through the international recognition of a general right to a healthy environment. Chapter 3 highlights which accountability mechanisms are crucial for ensuring that environmental child rights are effectively put into practice. Chapter 4 argues that child rights should get more recognition in environmental and sustainability policy, since hitherto the “pillar” approach in politics has meant that human rights concerns have played a subordinate role in these policy areas. The study concludes with looking ahead to the necessary steps towards improved protection of environmental child rights.
1. Two paths – one goal?

Developing environmental and human rights protection

It is no new idea that environmental protection is interrelated with human rights and the rights of future generations. The United Nations’ first major international conference on the environment, in Stockholm in 1972, placed it prominently in Principle 1 of the Final Declaration:

*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.*

Following this first explicit recognition of the strong relationship between environmental protection, development and human rights, the dependence of human rights on preserving a healthy environment has been frequently reiterated in relevant documents, reports and UN resolutions. Yet ultimately there is still a lack of political will to endow international commitments with the necessary legal substance and authority.

Environmental protection in the Convention on the Rights of the Child (CRC) and other human rights instruments

Very few of the global human rights instruments contain explicit provisions on the environment. That is partly due to the fact that the International Bill of Rights (consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights) had already been worded when international environmental law started to develop. Most existing provisions in the human rights instruments relate to the right to an adequate standard of health. The Convention on the Rights of the Child of 1989 raises environmental challenges in the specific context of child health and education (Article 24/29 CRC).

The Child Rights Committee and the other bodies that monitor the implementation of human rights treaties attempt to compensate to some extent for the lack of substantive environmental rights by highlighting the dependence of protected rights on preserving a healthy environment. This particularly applies to the economic, social and cultural rights.

Unlike in global agreements, governments tend to be more willing to include environmental rights in national constitutions or regional human rights instruments. Both the African Charter on Human and Peoples’ Rights (1981) and the Additional Protocol to the American Convention on Human Rights in the Area of Social, Economic and Cultural Rights (1988) explicitly recognize the right to a healthy environment. It is also enshrined in most constitutions adopted since the 1990s.

The substantive environmental rights written into regional human rights treaties and national constitutions enable those affected by ecological damage to demand more far-reaching and comprehensive protective measures to improve the quality of the environment. Past experience shows that a right to a healthy environment can be a useful corrective in the interplay of competing social interests.

An important attempt to strengthen environmental human rights at the UN level was made in 1994 by Fatma Zohra Ksentini, then Special Rapporteur on Human Rights and the Environment. She submitted a draft UN Declaration that summarizes the linkages between human rights and the environment, and on this basis proclaims the right to a «secure, healthy and ecologically sound environment». Unfortunately the declaration did not meet with the approval of the UN Human Rights Commission (now Human Rights Council). However, the increasing awareness of the implications of climate change has revived international interest in a better understanding of the relationship between human rights and environ-

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**UN Convention on the Rights of the Child**

Art. 24 (2) CRC: »States shall pursue full implementation of this right [health] 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 provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.«

Art. 29 (1) CRC: »States Parties agree that the education of the child shall be directed to: (e) The development of respect for the natural environment.«
The right to a healthy environment in regional human rights instruments and national constitutions


Article 24: «All Peoples shall have the right to a general satisfactory environment favourable to their development.»


Article 11 (Right to a Healthy Environment):

(i) Everyone shall have the right to a healthy environment and to have access to basic public services;
(ii) The States Parties shall promote the protection, preservation, and the improvement of the environment.»

South African Constitution (1996)

Article 24: »Everyone has the right
(a) to an environment that is not harmful to their health or well-being; 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.»

See inter alia the UN Secretary General’s report on «Human rights and the environment as part of sustainable Development» (2005).

See note 4, §78. On the basis of Human Rights Council Resolution 16/11.


Rio Declaration on Environment and Development.

AGENDA 21 was the UNCED action programme.

The States Parties shall promote the protection, preservation, and the improvement of the environment. Since 2005 UN institutions have addressed the human rights impacts of environmental degradation in several resolutions and reports.8

In an analytical study on human rights and the environment submitted to the UN Human Rights Council prior to its 19th session (2012), the UN High Commissioner for Human Rights recommends that the Council devote more attention to global environmental damage as one of «the pressing human rights challenges facing humanity in the twenty-first century.»9 The Human Rights Council has now established a mandate for an Independent Expert on human rights and the environment, inter alia, to explore »the obligations related to the enjoyment of a safe, clean, healthy and sustainable environment«.10

Human rights in environmental and sustainability policy

Like human rights law, the international environmental and sustainability policy has long treated environmental degradation and violations of human rights as unrelated issues. In fact, multilateral environmental agreements still often focus on »technical« problems rather than the negative consequences for people affected by environmental damage and their rights, i.e. they mostly favour inter-governmental procedures over remedies for victims.

The UN Conference on Environment and Development (Earth Summit) in Rio de Janeiro in 1992 was a milestone in linking environmental and human rights protection. Governments for the first time recognized that »environmental issues are best handled with participation of all concerned citizens«. Principle 10 of the Rio Declaration guarantees access to information, participation in decision-making processes and access to justice in environmental matters.11 The special role of children as agents of change in sustainability issues was underlined in Principle 21 of the Rio Declaration and then in chapter 25 of AGENDA 21.12

Many environmental agreements concluded since then have incorporated the procedural rights recognized in Rio. From the perspective of human rights protection, however, the pertinent provisions must be regarded as insufficient insofar as they rarely go beyond general terms, or allow only limited scope for participation, such as the access to information. International environmental and sustainability policy still lacks a solid human rights foundation.

The Earth Summit of 1992 was without doubt a landmark for linking environmental protection and children’s and human rights. Yet at the same time, the Rio declaration reflects the reluctance of governments – existing at the global level to this day – to go beyond involving the public concerned and to guarantee substantive environmental rights or even
the right to a healthy environment. This approach was not changed by Rio+10, the World Summit on Sustainable Development in Johannesburg, nor by Rio+20, the most recent conference on sustainable development. While the outcome document of Rio+20 contains references to a number of environment-related rights such as the right to health, water, food, development and an adequate standard of living, it still lacks a strong commitment to human rights as the universally recognized normative framework for sustainable development.

The global impact of climate change shows how urgent it is to internationally recognize and legally codify the relationship between human rights and the environment. There is no more time to waste in furthering the integration of environmental and human rights protection under the umbrella of sustainable development.

13 See Johannesburg Declaration on Sustainable Development (2002).

**Rio Declaration of 1992 and AGENDA 21**

**Rio Declaration**
The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all (Principle 21).

**AGENDA 21**
Children not only will inherit the responsibility of looking after the earth, but in many developing countries they comprise nearly half the population. Furthermore, children in both developing and industrialized countries are highly vulnerable to the effect of environmental degradation. They are also highly aware supporters of environment thinking. The specific interests of children need to be taken fully into account in the participatory process on environment and development in order to safeguard the future sustainability of any actions taken to improve the environment (Chapter 25.12).
2. Environment-related child rights in the CRC

The best interests of the child

Art. 3(1) CRC asserts: »In all actions concerning children, (...) the best interests of the child shall be a primary consideration.« This includes actions that indirectly impact on children, e.g. related to the environment, as stated by the UN Committee on the Rights of the Child in its General Comment on implementing child rights in early childhood.1

»While the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing.«15

When states come to determine the degree of environmental protection, the best interests of the child must be a guiding principle for decision-making.

1 General Comment No. 7 on Implementing Child Rights in Early Childhood, §30b.

2.1 The child’s right to life, survival and development (Article 6 CRC)

Every year three million children die of environmentally related illnesses.

The child’s right to life, survival and development is so significant and fundamental for the enjoyment of all other child rights that the UN Committee on the Rights of the Child has identified it as one of the CRC’s four guiding principles.16 At the same time, »the right to survival and development can only be implemented in a holistic manner, through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play (Articles 24, 27, 28, 29 and 31) [...].«17
The child’s right to life, survival and development therefore requires the regulation or banning of activities (e.g. industrial activities) causing such poor environmental conditions that there is imminent danger to the life and development of children. However, Article 6 CRC serves not just to guarantee the fundamental needs of children, but also to ensure conditions necessary for a decent and dignified life and growing up in a safe environment. In fact, the child’s right to life, survival and development raises the issue of quality of life: it obliges States Parties to the CRC to guarantee the child’s survival and development to the maximum extent possible. That is not the case, however, if e.g. dangerous pesticides or toxic heavy metals found in the environment lead to lasting impairments of children’s ability to learn, or to growth disorders. Furthermore, as a result of developments such as rapid urbanisation and environmental degradation fewer and fewer children have the opportunity to experience their natural surroundings in safety, thereby lacking access to one of the basic components of a healthy development.

Art. 6 CRC provides for special protection against environmental damage, posing a general and immediate threat to the life and development of children. However, other protected child rights can inform and strengthen policy-making in the more specific area of environmental protection in a more specific way.

### 2.2 The child’s right to health

*Every year approximately 1.5 million children fall prey to diarrhoeal diseases, mostly caused by impure water.*

Children’s health largely depends on a healthy environment, e.g. access to safe, potable water and sanitation, and adequate food and housing. The right to health is thus also the primary reference point for environmental problems in the CRC. Article 24 (2c) expressly obliges states to consider «the dangers and risks of environmental pollution» when combating diseases, undernourishment and malnutrition. Implementation of the principle of non-discrimination requires that all children have equal access to «safe environments» – as underlined by the UN Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment on the Right to Health.

The right to health is often equated with the right to medical care. It is therefore important to remind states that, when fulfilling their human rights obligations, they must also take account of underlying determinants like a healthy environment.

### A General Comment on the right of the child to the enjoyment of the highest attainable standard of health

The UN Committee on the Rights of the Child is currently working on a General Comment elaborating on the child’s right to health as set forth in Art. 24 CRC. The Comment will above all clarify the normative content of the child’s right to the enjoyment of the highest attainable standard of health along with the obligations of states, and it will contain concrete measures to implement Art. 24. terre des hommes calls for appropriate consideration of the underlying environmental determinants of children’s health with regard to the right’s normative content, state obligations, implementing measures or actions, and recommendations on indicators. The proposal on the substantive scope and structure of the General Comment focuses on the following aspects from the perspective of environmental children’s rights:

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**2** [www2.ohchr.org/english/bodies/crc/callsubmissionsCRC.htm](http://www2.ohchr.org/english/bodies/crc/callsubmissionsCRC.htm) (accessed on March 5, 2012).

**18** See, for example, the jurisprudence on the child’s right to life by the Inter-American Court of Human Rights in the case of the «Street Children» (Villagran Morales et al.): [http://www.corteidh.or.cr/docs/casos/articulos/seriec_32_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_32_ing.pdf) (accessed on May 28, 2012).

**19** More extensive study is necessary to elucidate the content of article 6 CRC, taking into account also the linkages between the right to life, survival and development and the environment.

**20** General Comment No. 14 on the Right to Health, §22.

**21** Ibid. §§4 and 11.
Chemicals have become part of people’s life in modern societies. Nevertheless, some 47,000 people die every year from acute poisoning caused by hazardous substances. Many more suffer from serious and life-threatening diseases linked to constant pollution through chemicals. Owing to their physical disposition, children are particularly threatened. Toxic chemicals considerably increase the risk of children falling ill and can extremely impair their physical and mental development (e.g., ability to learn). Since some chemicals do not easily degrade, they remain in the environment for a long time. Irresponsible management of chemicals therefore also harms future generations.

Children in developing countries are particularly affected, since they are frequently exposed to substances that have long been prohibited in developed nations. They may also be exposed to toxic waste imported from Western states. Moreover, they have little access to medical care or to justice when their rights are violated. There is a frequent lack of necessary information about harmful and toxic substances. Product labels – if they exist at all – are rarely in the local language and are not written in a child-friendly way. Protective measures are hard to implement or ineffective, because financial and technical resources are insufficient. In such cases, the only solution is to ban hazardous substances.

Problems with toxic chemicals often occur with the use of pesticides. Pesticides are used in many areas of life and can be imbibed from food, air, water, etc. In many developing countries, highly dangerous pesticides are used both in agriculture and also in controlling domestic pests, without appropriate protection standards. Children are not only particularly sensitive healthwise to toxic pesticides, they also tend to have more “hands-on” contact with their immediate surroundings. The lack of ability to read and lack of judgement often leads them to absorb pesticides by accident.

The use of heavy metals like lead or mercury continues to constitute a great risk to health. Lead-based paint is used in many developing countries to paint schools and houses, along with toys, playground equipment or other products with which children come into close contact. Even low doses of lead can have serious repercussions on children’s health. Small children absorb four to five times as much lead as adults and keep it longer in their bodies. Mercury is used for many domestic purposes but also for gold-mining, thus potentially having serious repercussions for children working in extractive industries.

A number of relevant multilateral environmental agreements regulate the risks caused by toxic and dangerous substances but frequently do not place the people concerned and their rights at the centre of state responsibilities. At the moment, a global mercury convention is being negotiated under the umbrella of the UN Environment Programme: the goal should be a complete ban on the use of mercury!


2.3 The child’s right to food

About eleven million children die in developing countries each year, 60 percent of them of the consequences of poverty and malnutrition and hunger-related diseases.²⁴

The child’s right to food can be derived from Articles 24 and 27 CRC. It is implemented, » [...] when [...] every child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.«²⁵

Realising the right to food largely depends on preserving a healthy environment, its core content implying the »availability of food in a quantity sufficient to satisfy the dietary need of individuals, free from adverse substances, and acceptable within a given culture«, according to the CESCR definition.²⁶

This requires, inter alia, the adoption of appropriate »environmental« policies²⁷.

The long-term availability of food for present and future generations depends on a sustainable use of resources (availability²⁸).

The significance of a sustainability policy in the area of food security is expressly underlined by the Voluntary Guidelines on the Right to Food published by the Food and Agriculture Organisation in 2004:

Brief overview of state obligations regarding the environmental aspects of the child’s right to health

Obligation to Respect
States must refrain from unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities, and thereby interfering with the underlying determinants of the child’s health.²²

Obligation to Protect
States must prevent non-state actors from interfering with the environmental dimensions of the child’s right to health. For example, states should adopt legislation or other measures to ensure that corporations do not pollute air, water and soil and thereby negatively impact on the underlying determinants of child health.²⁵

Obligation to Fulfil
States are obliged to undertake all appropriate measures to fully realise the child’s right to health. For example, states should reduce and remove existing environmental pollution and prevent environmental problems in the long-term (e.g. the use of persistent pollutants).
States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry (Guideline 8 E).  

Food must also be of adequate quality to satisfy children’s mental and physical health, growth and development needs (quality). It must be »free from adverse substances«. Food safety calls for a range of public and private protective measures in order to prevent the contamination of foodstuffs e.g. through poor environmental hygiene.  

Finally, the right to food guarantees that all children must have access to adequate food without discrimination (access).

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### Child rights in environmental education

Art. 24 (e) CRC: »States Parties [...] shall take appropriate measures: 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 hygiene and environmental sanitation [...].«

Art. 29 (1) CRC: »States Parties agree that the education of the child shall be directed to: (e) The development of respect for the natural environment.«

Education plays a fundamental role in the realisation of environment-related child rights. Access to education and support in the use of basic knowledge of the advantages of hygiene and environmental sanitation is an integral part of the right to health in article 24 CRC. Likewise, the implementation of other environmental-related rights requires educational measures, such as »[...] appropriate education concerning [...] protection of water sources and methods to minimize water wastage«.  

What is more, the Convention on the Rights of the Child of 1989 lays down important standards for promoting a stronger environmental awareness by recognising that »[t]he development of respect for the natural environment« is a central aim of education (Article 29 (1) e). The degree of significance in the CRC is shown by a comparison from legal history: Respect for nature as an educational aim was non-existent in the ICESCR of 1966 (see Article 13 (1)). The provisions of the CRC may thus be understood as an important normative basis of a transformed global awareness, without which it would seem impossible to cope with local and global ecological challenges facing humanity in the twenty-first century. Environmental education must not stop at the mediation of knowledge of a changing environment; it should empower children to instigate change towards an ecologically and socially sustainable life model. The CRC provides a legal basis for this!

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7 General Comment No. 15 on the Right to Water, §25.
Brief overview of state obligations regarding the environmental aspects of the child's right to food:

Obligation to Respect
States must not interfere with the access to natural resources if children depend on these for secure food supply.

Obligation to Protect
States are required to prevent non-state actors, e.g. corporations from violating the child’s right to adequate food. For example, states should adopt measures to ensure that contaminants from industrial or agricultural processes, including residues from pesticides or heavy metals, do not jeopardize children’s access to food of adequate quality necessary to satisfy their physical and developmental needs.

Obligations to Fulfil
States are obliged to take appropriate steps to strengthen the long-term food security of all children. That presupposes, inter alia, monitoring the exploitation of natural resources and teaching adults and children to use available resources sustainably.32

2.4 The child’s right to water and sanitation

Every day 6000 children die as a result of illnesses caused by unclean water and poor sanitary condi-
tions.33

Water is a vital resource. The international community finally affirmed that every person has a right to water in 2010 with the adoption of resolution 64/292 in the UN General Assembly.34 The child’s right to water can be derived from Articles 24 and 27 CRC.35 It entitles every child «to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use».36 The realization of the right to water thus depends in various ways on a healthy environment.

Water must be available to children in adequate quantities for their personal and domestic use (availability). That generally covers water for drinking, washing and food preparation, along with water for personal and household hygiene. The minimum amount of water available should correspond to the guidelines of the World Health Organisation.37

The qualitative aspects of the right to water are strongly linked to the environment (quality). Available water must be safe, i.e. free from substances that constitute a threat to the child’s health.38 After all, water contamination is the main cause of illnesses and children are particularly vulnerable due to their weak immune systems.39 When deciding on their water-policy, i.e. when developing national standards and measures to implement them, states must give priority to children’s particular sensitivity to harmful environmental substances – as required by the best interest principle in Article 3 CRC.40

The adequacy of water in terms of availability and quality must be ensured in a sustainable manner. The CESCR has therefore stressed that the steps to fulfil the right to water must be designed such that this right can be realised by present and future generations.41 Something that is often neglected or taboo for cultural reasons is that children also have a right to sanitation. Just like the right to water, the right to sanitation was officially recognised by the UN General Assembly in 2012 and is closely linked to it. Access to clean water is strongly dependent on the existence of adequate sanitation facilities. Without safe latrines or disposal systems excreta or wastewater gets into sources of drinking water, so that child health and hygiene is not guaranteed. Hence, children must have access to a sufficient number of culturally acceptable, hygienically and technically safe sanitation facilities, above all in schools.42

There are still 1.5 million children every year who die as a result of impure water: Clean water is a basic precondition for a healthy life

32 Ibid. §25. See also the FAO’s Right to Food Guidelines.
35 See, inter alia, General Comment No. 7 (Child Rights Committee), §27a.
36 General Comment No. 15 on the right to water (CESCR), §2.
37 Ibid. §22a. See also Howard, Guy/Bartram, Jamie (2005).
38 Ibid. §22 b. That includes from chemical substances or radiation.
40 Ibid.
41 General Comment No. 15 on the Right to Water (CESCR), §11.
The realization of the right to water and sanitation requires that all children have actually access to clean water and sanitation facilities (accessibility). That is not the case in many developing countries, because safe water sources are often hard and far to reach. For many children, above all girls, access to clean water and sanitation facilities is therefore linked to great risks.

Brief overview of state obligations regarding the environmental aspects of the child’s right to water and sanitation

**Obligation to Respect**
States must not prevent children from gaining access to natural sources and sanitary facilities on which they depend for a clean water supply.

**Obligation to Protect**
States are required to pass and enforce laws to restrain non-state actors, e.g. corporations from denying equal access to adequate water or from pollutants and inequitably extracting from water resources, including natural resources.43

**Obligation to Fulfil**
States should, inter alia, adopt a sustainable water policy, ensuring that there is sufficient and safe water for present and future generations. According to the CESCR this may include:
- reducing depletion of water resources through unsustainable extraction, diversion and damming;
- reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta;
- monitoring water reserves;
- ensuring that proposed developments do not interfere with access to adequate water;
- assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity;
- increasing the efficient use of water by end-users;
- reducing water wastage in its distribution;
- response mechanisms for emergency situations;
- provision of adequate water to educational institutions as a matter of urgency;
- appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.44

Drinking water quality in developing countries:

In 2009 Catarina de Albuquerque, the UN Special Rapporteur on the human right to safe drinking water and sanitation, visited Costa Rica and gave an account on typical problems of water treatment and monitoring in developing countries. The UN expert indicated that only 20.7 percent of water sources in Costa Rica were regularly checked and the control of water quality was limited to measuring bacterial contamination. Studies prove, however, that water pollution is primarily caused by industrial and agricultural development, while faecal contamination no longer constitutes a risk in Costa Rica. At the time of the special rapporteur’s visit there was also a lack of effective regulation on maximum admissible doses of toxic substances in potable water. The use of pesticides like Bromazil on pineapple plantations is particularly problematic. They easily seep through the soil and contaminate the ground water. Long-time pollution with pesticides may lead to children having serious health problems and developmental disorders. In the Siquirres community, 6000 people had to be supplied with water from mobile tanks for long periods due to soil contamination. The situation led to serious social conflicts in the community.

The right to water and sanitation shows how vital a healthy environment is for children. After all, clean water is also an essential determinant for the realisation of other environmentally-related child rights. The CRC understands the provision with clean drinking water to be a necessary measure for combating disease and under-nourishment and, in this context, expressly points to the dangers and risks of environmental pollution (see 2.2). The right to food also depends directly on water quality: untreated (industrial) wastewater, used for agriculture, can have considerable effects on the quality of food and thus on children’s health. Food-chain transfer is the primary route of exposure to toxic pollutants in the wastewater.\footnote{See WHO Guidelines for the Safe Use of Wastewater, Excreta and Grey Water. Vol.2: Wastewater in Agriculture, pp. 55 and 73.}

Realising environmental rights for all children: extraterritorial obligations

The realisation of children’s rights is primarily a domestic obligation, but at the same time states also have an international duty to give effect to children’s rights. There are two important reasons for this, ecologically speaking: first, environmental degradation frequently crosses borders (e.g. air or water pollution); its consequences are thus also felt by people in other countries. In this context climate change poses a special challenge: It is primarily caused by industrialized nations – and meanwhile also by many emerging economies – but its consequences mostly hit poor people in developing countries. The relevance of international human rights obligations can be shown in another respect as well. Economic globalisation has led to transnational activities of more and more private companies. This also raises the risk of their causing considerable environmental pollution abroad. Unfortunately economic globalisation is being supplemented only gradually by legal globalisation. In many developing countries human rights violations by foreign companies are not pursued because there are only weak structures for the rule of law or there is a lack of political will to prosecute offenders.

There have been increasing efforts in the last few years to specify the international obligations of states in greater detail. In 2011, a group of international human rights experts presented (soft law) Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.\footnote{The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights: www2.lse.ac.uk/humanRights/articlesAndTranscripts/2011/MaastrichtEcoSOc.pdf (accessed on May 25, 2022).} Accordingly states have, separately and jointly, the obligation to

1. refrain from conduct which, directly or indirectly, nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories (duty to respect);
2. ensure that non-state actors do not nullify or impair the enjoyment of economic, social and cultural rights of persons extraterritorially, e.g. transnational corporations and other business enterprises which they »are in a position to regulate« (duty to protect);\footnote{To specify and underpin extraterritorial human rights obligations we can also resort to international environmental principles, e.g. the state obligation to ensure that activities within its jurisdiction or control do not cause damage to the environment of other states. This »Do no Harm Principle« is enshrined in Principle 21 of the Stockholm Declaration of 1972. See e.g. Article 4 and 24 (4) CRC and General Comment No. 5 on General Measures of Implementation for the Convention on the Rights of the Child, §§7 and 60 ff.}

Likewise in 2011 the UN Secretary-General’s Special Representative, John Ruggie, submitted his Guiding Principles on Business and Human Rights. They determine, inter alia, that corporations, independently of state obligations, have a responsibility to respect human rights through their own »due diligence«. The Guidelines are applicable to transnational corporations.\footnote{See first draft of the upcoming GC: http://www.ohchr.org/english/bodies/crc/callsubmissionsCRC_BusinessSector.htm.} The role of the business sector will also be the topic of a General Comment soon to be issued by the UN Child Rights Committee. Given the tremendous impact business enterprises can have on the environment and thus on a number of child rights dependent on preserving a healthy environment, the GC should duly take account of states’ (extraterritorial) obligations with regard to transnational corporations.\footnote{See WHO Guidelines for the Safe Use of Wastewater, Excreta and Grey Water. Vol.2: Wastewater in Agriculture, pp. 55 and 73.}
2.5 The child’s right to housing

About 640 million children in developing countries grow up in unhealthy living conditions. That is every third child! About two million children under five die of fatal respiratory diseases resulting from unhealthy environmental conditions, e.g. open fire and smoke in closed rooms.46

The child’s right to adequate housing derived from Article 27(3) CRC should not be interpreted narrowly. It guarantees more than »having a roof over one’s head« and views shelter not just as a commodity. Every child has »the right to live somewhere in security, peace and dignity«.47 Whether housing for children is adequate from an environmental point of view depends on different aspects. Housing must first of all contain facilities essential for the child’s health, security and welfare (availability). This involves basic infrastructure such as sustainable access to natural resources, clean drinking water and sanitation facilities and orderly effluent and refuse disposal.48

Housing quality is a key element for protecting children from existing environmental threats to their health (habitability).49 In many developing countries, however, the opposite is the case, indoor pollution being one of the greatest risks to children’s wellbeing.50 It is caused, e.g. through the use of lead-containing paint or asbestos. Often poor indoor air quality results from open fires and smoke, compounded by low-quality stoves and a lack of ventilation.51 The adequacy of housing is, moreover, determined by its location. Housing must not be built in polluted areas harmful or threatening to children’s health, e.g. on contaminated sites or near sources of pollution such as insecure disposal sites or industrial plants.52 The availability of adequate housing is not much use to children, of course, if they either have no access to it or not a minimum of legal security of tenure (access/legal security of tenure). Often the place of residence is what decides whether children can expect to have adequate housing. Many poor children in developing countries live in informal settlements or slums, erected without planning and – because of their precarious location, poor housing quality and lack of infrastructure – are particularly vulnerable to environmental problems. With flooding, landslides and other ecological disasters, slums are among the most unsafe places and children among the most frequent victims.53 The costs of adequate housing are much too high for many families so that they have to put up with makeshift accommodation.

It is also important for children to have a minimum degree of tenure security, so that they are protected e.g. against forced resettlements or other threats.54 Slum children are frequently denied access to important basic infrastructure like sanitation precisely because their residential status is not recognised. The principle is: where people live in security they are usually more sparing with their natural environment!

Street pesticides

When humans live in poor, cramped conditions their houses, flats or huts are often in a very poor state – not to speak of the attached sanitation facilities and waste disposal systems. Under such circumstances, vermin can create considerable problems: rats, cockroaches, bugs etc. transmit disease, eat and contaminate food, bite people – often sleeping children – and thereby worsen their situation which is bad enough. In poor quarters this has led to a high demand and a lucrative market for toxic «street pesticides», and thus to many cases of poisoning. Street pesticides are sold by informal dealers. They are mainly pesticides permitted for use in agriculture, but bottled in small containers like lemonade or alcohol bottles and then advertised as effective remedies for domestic use. Street vendors sell the pesticides either pre-mixed for sale or they manufacture the products from concentrates and sell them directly as such. The goal is to sell pesticides that work fast and well. This is shown, e.g. by the street name of the pesticide Aldicarb for poisoning rats. It is called »Two steps«, because after imbibing the poison the rat can only take two steps. The pesticides are sometimes highly toxic – above all, for children. They are frequently stored openly and are accessible under the bed or in the kitchen. Due to their consistence they can easily be mistaken for flour or milk.
For children the »environmental« adequacy of housing is enormously important. It does not just promote their health but constitutes a precondition for success at school and children’s overall wellbeing. After all, children spend a large part of their time at or near their homes. The former UN Special Rapporteur Miloon Kothari pointed out repeatedly that from a human rights perspective housing cannot be separated from other aspects of sustainable development, e.g. a clean, healthy environment. As Kothari succinctly put it, » [...] the realisation of the right to adequate housing loses its meaning unless processes are put into place to ensure that people and communities can live in an environment that is free from pollution of air, water and the food chain.«

**Brief overview of state obligations regarding the environmental aspects of the child’s right to adequate housing**

**Obligation to Respect**

States must not arbitrarily intervene in children’s rights to adequate housing, e.g. by denying certain groups such as slum dwellers a legally secure tenure and thus access to basic services that offer protection to environmental health risks.

**Obligation to protect**

States must guarantee that the child’s right to adequate housing is not violated by non-state actors (e.g. land- or house-owners or corporations). States should, amongst other things, adopt legislation or other measures to ensure that third parties do not produce unhealthy and inappropriate living conditions along with the guarantee that the supply of basic services by private corporations does not undermine the availability, quality or accessibility of adequate housing.

**Obligation to fulfil**

Using their available resources, states must guarantee supplies of basic services, e.g. refuse disposal. When guaranteeing the right to adequate housing it is important to give priority to children in general and groups of children who are particularly vulnerable (e.g. slum children).
2.6 Future prospects: More environmental protection through a child right to a healthy environment?

The environment-related rights enshrined in the CRC can protect children from harmful environmental effects that impact directly on some of their fundamental needs. This way they guarantee that basic elements of a »healthy« environment are fulfilled. But none of the child rights articles guarantee a specific environmental quality or lay down environmental protection as a state objective. That limits the status and scope of child rights-based environmental protection, i.e. based on the provisions of the CRC. The same applies to other global human rights treaties.

At the same time it is clear that global environmental damage is one of the greatest challenges to human rights in the 21st century. Climate change is of particular relevance in this respect. The UN Human Rights Council has pointed this out on several occasions. Predictions assume that every year 175 million children will be hit by weather and climate change disasters in the next ten years alone. Climate change ensures that droughts, floods and other extreme weather phenomena will increase and become more intensive. It has considerable repercussions on children’s food security and health, their access to water, their housing situation and thus on the realisation of their rights.

Poor children in developing countries are particularly affected because the securing of their livelihoods depends on climate-sensitive resources to an above-average degree. At the same time, they and their families lack the financial and technical capacities to protect themselves from the impact of climate change. The effects of climate change thus reinforce existing poverty of children.

In an ecological sense this can lead to a vicious circle, since those affected are often forced to overuse existing natural resources in order to cope with the consequences of weather disasters. Climate change also impacts indirectly on the realisation of child rights. Frequently climate

The child’s right to play and leisure and recreational activity (Article 31 CRC)

Children need the opportunity to engage in play and leisure and recreational activities in order to develop and blossom. The CRC’ States Parties therefore recognise these basic components of a healthy childhood as distinctive rights and are required to encourage the »provision of appropriate and equal opportunities for [...] recreational and leisure activity« (Article 31(2)). The realisation of the right to play, leisure and recreation is only possible in a healthy and safe environment. Hence, Art. 31 CRC should always be interpreted in light of the right to adequate housing and other environment-related rights.

In urban centres, in particular, children frequently find housing and living conditions characterised by cramped quarters and pollution, and hardly any space for safely playing games or recreation. And: By 2050 some 1.4 billion people will live in informal settlement or slums and by 2050 seven out of ten people will live in cities! When drafting its upcoming General Comment on Art. 31, the UN Committee on the Rights of the Child should duly take account of the living and environmental conditions essential for children to be able to exercise their rights to play, leisure and recreation.

To ensure the children’s right to play leisure and recreational activities children have to find a suitable environment: Playing children in a shanty town near the capital of Mozambique, Maputo.
Environmental justice for all future generations

Anyone who calls for protecting children’s rights in the context of serious environmental degradation often has the best interests of all future generations in mind. That is because the children of today will have to live in the world of tomorrow. The rights of future generations play little role in current politics and business thinking, unfortunately, and their voices generally go unheard. Doing justice to the future means, however, giving appropriate consideration to future generations in the decisions of today’s generation. For intergenerational equity to be preserved, the following principles must be respected:

1. Each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations (conservation of options).
2. Each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations (conservation of quality).
3. Each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations (conservation of access).16

In the last few decades the interest and needs of future generations have penetrated numerous relevant environmental and human rights documents. They are established in the CRC through the best interest principle27 and an integral part of the concept of sustainable development. The Rio Declaration (1992), in particular, contains an important commitment to the principle of intergenerational justice. Principle 3 states:

“The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”

In 1997 the responsibility of the present generations towards future generations was summed up in a UNESCO declaration, having regard, inter alia, to the CRC. It covered all the different aspects of a just policy towards coming generations: environmental protection; preserving biological and cultural diversity; education; development and peace. At the political level the UNESCO declaration has hitherto met with little response.

The fact that future generations still lack a proper representation of their interests is due both to the lack of legal authority of existing commitments and also the lack of effective implementation and accountability mechanisms. The goal must be to finally end discrimination against future generations and their needs in the form of legally guaranteed rights and other institutional safeguards. After all, future generations have a right to an environment that is free of serious irrevocable damage of the kind currently being observed in respect to climate change, the loss of biodiversity, radioactive contamination or the use of persistent pollutants. Otherwise their chances of a self-determined and dignified life will be drastically reduced.

DECLARATION ON THE RESPONSIBILITIES OF THE PRESENT GENERATIONS TOWARDS FUTURE GENERATIONS (1997)

ARTICLE 4 – PRESERVATION OF LIFE ON EARTH:
The present generations have the responsibility to bequeath to future generations an Earth which will not one day be irreversibly damaged by human activity. Each generation inheriting the Earth temporarily should take care to use natural resources reasonably and ensure that life is not prejudiced by harmful modifications of the ecosystems and that scientific and technological progress in all fields does not harm life on Earth.

ARTICLE 5 – PROTECTION OF ENVIRONMENT:
1. In order to ensure that future generations benefit from the richness of the Earth’s ecosystems, the present generations should strive for sustainable development and preserve living conditions, particularly the quality and integrity of the environment.
2. The present generations should ensure that future generations are not exposed to pollution which may endanger their health or their existence itself.
3. The present generations should preserve for future generations natural resources necessary for sustaining human life and for its development.
4. The present generations should take into account possible consequences for future generations of major projects before these are carried out.

…

ARTICLE 11 – NON-DISCRIMINATION:
The present generations should refrain from taking any action or measure which would have the effect of leading to or perpetuating any form of discrimination for future generations.

16 These three basic principles of intergenerational equity were proposed by Edith Brown Weiss (1990).
17 The CRC even stipulates that in all actions concerning children the best interests of the child shall be a primary consideration. Legally speaking, however, this claim is only applicable to children already born.
Large-scale deforestation damages the environment: Forests are lost as carbon dioxide store, heavy rain leads to landslides and new land is used for monoculture protection measures or other forms of disaster prevention lead to displacements and forced evictions. Families thereby often lose their access to natural resources. Displacements have particularly serious consequences for children, because family stability, their livelihoods and their rights to education and health are threatened.

Severe environmental problems such as climate change, but also the loss of biological diversity, persistent pollutants and the ruthless exploitation of resources are largely due to a global development model that is primarily based on economic growth and subordinates all other social and ecological interests to it. The model produces deeply unjust consequences, primarily for children living in poverty and for all future generations. In the debate over new development paradigms, the international recognition of a (child’s) right to a »healthy« environment constitutes a possible response to the pressing human rights challenges arising from global environmental harm.

As early as 1994, the former UN Special Rapporteur Fatma Zohra Ksentini submitted a draft declaration on human rights and the environment, featuring the right to a secure, healthy and ecologically sound environment, also taking account of the interests of future generations. Unfortunately the draft has not been supported at the UN level to this day. However, the UN High Commissioner for Human Rights affirms in its latest analytical study on the relationship between human rights and the environment (2011) that the recognition of a general right to a healthy environment must at least be taken into account in view of existing global environmental problems. The right to a healthy environment is already entrenched in human rights instruments at the regional level and in many national constitutions. Experience shows that it may protect social interests or rights that have hitherto not been given due legal respect.

The right to a healthy environment:

• strengthens environmental protection towards other social – above all economic – interests (e.g. exploitation of natural resources), in that it recognises the fundamental value of the environment as the condition for life. For a long time development has been equated too strongly with economic growth. Comprehensive development, as foreseen by the right to development, is a multidimensional process with economic, political, social, cultural and environmental elements;

• expresses a broad public (collective) interest: our earth and the natural resource base are a global
common that is to be protected in the name of the whole of society. Behind single environmental rights violations there frequently lie socially far-reaching forms of environmental destruction such as deforestation or the contamination of whole rivers and territories, which call for comprehensive solutions;

• underlines the obligation to protect natural resources in a sustainable manner along with the maintenance of biodiversity and important ecosystems; to date, calls for such measures have had recourse to human rights to only a limited degree;

• reaffirms the application of environmental agreements, declarations, principles, (e.g. precautionary principle), standards (e.g. WHO guidelines) and »good practices« in giving substance to the environmental dimensions of human rights and corresponding state obligations; 64

• offers scope for recognising the interests and needs of future generations. States like Bolivia or Norway mostly place the rights of future generations in the context of a general right to a healthy environment, thereby adding to the idea of human rights an additional dimension of inter-generational justice; 65

• strengthens the intrinsic value of nature that is worthy of protection for its own sake. This aim is expressed in the World Charter for Nature (1982) and the Convention on the Rights of the Child.

64 One example is SERAC vs. Nigeria, in which the African Commission on Human and Peoples' Rights defined the states' obligations regarding the right to a »general satisfactory« environment in Article 24 of the African Charter of Human and Peoples' Rights by reference to international environmental law: http://www.achpr.org/communications/decisions/155/96 (accessed on May 28, 2012).


Article 2: All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible [...].

Article 4: All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

Article 21: All persons, individually and in association with others, have a duty to protect and preserve the environment.
3. Strengthening accountability for environmental child rights

Rights for children are merely of symbolic value as long as states do not have to be accountable for their implementation. For legal instruments to become reality, there have to be opportunities to monitor compliance with domestic and international obligations. Children need e.g. access to legal remedies when their rights are violated. However, child rights can also be monitored by parliamentary oversight or administrative procedures if they are transparent, impartial, accessible and effective. In many countries important monitoring tasks are assumed by independent national human rights institutions (e.g. Ombudspersons).

A number of human rights treaties stipulate that everyone whose rights are violated, including the child, has a right to access administrative or legal remedies. This is also implicit in the CRC, as expressly emphasised by the Child Rights Committee. It covers all rights, including the economic, social and cultural child rights that are particularly relevant to environmental problems. Yet due to their special and dependent status, children continue to find it difficult to pursue remedies for breaches of their rights. Child rights violations are rarely dealt with by courts and the children affected thus remain without reparation. It is absolutely essential for states to pay particular attention to making complaint procedures accessible for all children taking account of their specific needs. That primarily concerns the availability of child-friendly information and sensitive procedures, as well as legal assistance, advice and advocacy, including

Ombudspersons for future generations

The protection of environmental children’s rights and the rights of future generations calls for farsightedness and sustainable solutions, yet in politics and business often only short-term interests and needs are what count. At the same time, many of today’s political institutions are not up to the challenges posed by sustainable development: economic, social and environmental policy decisions are too often taken in isolation from one another, although their impacts are also to be felt in other social fields. In cases of doubt, environmental policy objectives and sustainability considerations take a back seat to economic goals, because social wellbeing is equated with growth and environmental protection with costs. In order to create a counterbalance to the predominant short-term mindset, some countries have established Ombudsperson for future generations. For example, in 2007 the Hungarian parliament created a parliamentary commissioner to protect the »right to a healthy environment« for present and future generations. He examines legislative proposals and monitors policy developments in different policy areas to ensure that they cause no serious and irrevocable environmental damage. The mandate further includes issuing policy recommendations and making statements to government bodies; receiving complaints and mediating between parties; calling for information and initiating investigations, and also ordering that an administrative action be stopped, or bringing controversial cases to court.

A number of civil society organisations, including terre des hommes, proposed the creation of Ombudsperson for future generations at the UN Conference on Sustainable Development (Rio+20) in June 2012. Despite strong support from many sides, some governments were unable to overcome the short-term orientation of policy-making and to agree to this proposal. Instead the UN Secretary General has been invited to present a report to consider how to take into account the needs of future generations. terre des hommes will support this process and continue to pursue the establishment of Ombudsperson for future generations at different levels, locally, nationally and globally. Many violations of the rights of future generations have taken on global dimensions (e.g. climate change) or are deeply rooted in the international political or economic system (e.g. resource exploitation), so that solutions can only be found at the international level. At the same time it is important to create Ombudsperson offices that are accessible for those concerned, particularly children, where they live and have expertise – i.e. at the national and local level.

support for self-advocacy. The creation and design of legal remedies must be guided by the principle of the best interests of the child – as also underlined by the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.70

3.1 The justiciability of environmental child rights

Economic, social and cultural rights, particularly relevant to environmental problems, were long regarded more as programmatic goals than justiciable rights. However, this way their protection depended solely on political will, because the victims of violations of rights were denied access to legal remedies. There has been great progress in the last few decades when it comes to defining the content of economic, social and cultural rights, and the obligations they entail. In order to fill their environmental dimensions with life, national and international courts are increasingly having recourse to recognised environmental law principles and treaties, environmental standards or »good practices«. This applies, for example, to the precautionary principle74 and the concept of intergenerational justice or Guidelines and emission standards of the WHO, which are all used to judge if states comply with their human rights obligations. How extensively courts resort to environmental law naturally depends on whether explicit environmental rights are entrenched in the pertaining international human rights treaties or national constitutions.

One problem still existing regarding the justiciability of environmental children’s rights constitutes restrictive procedural rules:

- Courts are traditionally oriented to individual rights violations, while economic, social and cultural rights relevant to environmental problems generally reflect complex structural challenges and are often related to collective violations of rights. In any case, future generations can only have their rights violated as a group. The necessity of proving a person is individually affected or has a sufficient individual interest, along with the lack of collective complaints mechanisms, mean that many children have practically no means of asserting their environment-related rights. One solution is allowing collective or class suits (e.g. through Ombudspersons along with suits in the public interest), that also benefit particularly disadvantaged groups of children or children and future generations in general.
- Many courts limit the right to appeal to »victims« of rights violations or to persons who can prove a sufficient threat. A broader application of the precautionary principle would make it possible for courts to deal with environmental risks as well. In many cases the causes of environment-related children’s rights violations are already known, while the consequences will only be felt in the future, as in the case of climate change or the plundering of natural resources.
- Environmental suits are linked with a great burden of proof. In the case of environmental pollution, it is frequently hard to prove direct causes of harm, while the consequences are not

The precautionary principle in court

The precautionary principle has been an internationally recognised principle in environmental law since the Earth Summit in Rio of 1992. It is being increasingly applied in court cases at the national level, as shown by the following example from South Africa.


In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

From a judgment by the Constitutional Court of South Africa concerning the right to a healthy environment and the obligation of state authorities to safeguard against contamination of underground water (2007) […] »This principle [Precautionary Principle] is applicable where, due to unavailable scientific knowledge, there is uncertainty as to the future impact of the proposed development. Water is a precious commodity; it is a natural resource that must be protected for the benefit of present and future generations.« 21

71 On the legal relevance of the precautionary principle for a sustainable water policy see e.g. the report of the Special Rapporteur on the right to water and sanitation in Costa Rica (2009), §6.

always quantifiable in every individual case, or are to be separated from other factors. Many health problems resulting from environmental pollution arise only a long time afterwards, e.g. in the case of constant exposure through pesticides. However, those affected often have to provide clear proof of an existing rights violation or the threat thereof when their suit is being examined for admissibility, which in many cases is not possible due to a lack of scientific certainty. In this case, there is a lot to be said for a reversal of the burden of proof or at least a facilitation of providing evidence in cases of serious violations of environment-related rights. Victims can strengthen their case by referring to maximum admissible levels of soil, water or air pollution, scientific expert opinions or field studies. Exceeding »safe« limits can indicate that the wellbeing of children is not guaranteed. The burden of proof particularly hits them, as they are not yet fully developed and are particularly sensitive due to their physical constitution.

When national standards are lacking or patently inadequate, because e.g. they reflect solely economic interests, then international standards and findings can be cited by way of comparison. The WHO has developed a number of universally applicable guidelines for assessing environmental impacts taking into account children's special vulnerability.\(^2\)

3.2 International monitoring mechanisms

There are a number of UN bodies and procedures enabling the monitoring of environment-related child rights. The most important supervisory body for children's rights is the UN Committee on the Rights of the Child. Each State Party to the CRC has a duty to report every five years on the measures taken to give effect to its undertakings under the Convention. The Committee then issues recommendations which are to contribute to a better realisation of child rights in the state concerned. Since there are no explicitly recognised environmental rights in the CRC ecological problems are not referred to systematically in the state reports or the Committee's »Concluding Observations«, which tend to follow the articles of the CRC. Environmentally relevant statements and recommendations confine themselves largely to the right to health in Article 24. Yet precisely the state review procedure offers a good opportunity to draw attention to serious and structural environmental problems and their impacts on a full range of children's rights. The UN Office of the High Commissioner for Human Rights in its report on the relationship between climate change and human rights (2009) expressly stated, for example, that more country-specific data and studies are necessary in order to be able to better assess the impact of climate change and adequate protection measures. It thus recommended that states supply information to this effect in their human rights reports to the competent UN committees.\(^3\) In any case, the shadow reports of civil society frequently point to the negative influence of environmental degradation on the implementation of children's rights.

In general, environmental problems should be given much greater attention in the Committee's work so that environmental children's rights are recognised more.\(^4\) However, for that to happen it
will be necessary to deal more intensively with the environmental dimensions of protected child rights. A General Comment\textsuperscript{75} of the Child Rights Committee could help highlighting the importance of a healthy environment for implementing the CRC as a whole and also as an underlying determinant of individual child rights, at the same time clarifying the linkages between the principles of the CRC and those of sustainable development. More specifically, such a Comment could address salient questions concerning the extraterritorial state obligations related to global environmental problems (e.g. climate change); the obligations of non-state actors; and the implementation and operationalisation of a child-rights approach to environmental protection and sustainable development (see Chapter 4). At least, however, environmental challenges should be included more systematically in relevant General Comments by the Committee. Three upcoming Comments will be concerned with Articles 24 and 31 and with child rights and the business sector. They will offer a good starting point for raising environmental problems as a cross-cutting issue.

In December 2011 the UN General Assembly adopted a new optional protocol to the CRC that provides for an individual complaints mechanism.\textsuperscript{76} Thereby children too will finally have a practical possibility of asserting their own rights at the international level.\textsuperscript{77} That applies of course to violations of the environmental aspects of protected children’s rights as well. The goal must be to win over as many states as possible to ratify the protocol, so that each child in the world will be able to assert his or her own rights, if necessary at the international level before the UN CRC Committee. The complaints mechanism will exercise an important exemplary function, particularly for the interpretation of the provisions of the CRC. Model cases may help to bring out and specify even more clearly the environmental aspects of children’s rights along with the corresponding obligations of the signatory states. When international (implementation) standards arise this way they can then rebound back on national legislation and jurisdiction.\textsuperscript{78}

The original draft of the optional protocol provided for a collective communications procedure, as well as the individual one. It was to allow recognised non-governmental organisations or national human rights institutions to raise complaints without having to identify individual victims. That would have given them the possibility of pointing to general child-rights deficiencies in public policy and calling for the elimination of structural social problems. The collective communications procedure would thus have been particularly appropriate for asserting environmental children’s rights (see 3.1.). Unfortunately it was (politically) not yet possible to push the collective complaint through at the UN level. It can, nevertheless, serve as a model for shaping complaints mechanism at the regional and national levels.

Besides the Child Rights Committee, other UN institutions can exercise a monitoring function regarding environmental children’s rights. Many Special Procedure mandate-holders of the Human Rights Council – including those particularly rel-

\textsuperscript{75} General Comments are designed to interpret the content of certain rights and provisions of the CRC.

\textsuperscript{76} Alongside a procedure to conduct »country-visits« when there are signs of gross and systematic child rights violations, and an inter-state complaints mechanisms. See Note 65 or http://www.ohchr.org/EN/HRBodies/HRC/WGCRC/Pages/OpenEndedWorkingGroupIndex.aspx (accessed on May 28, 2012).

\textsuperscript{77} The Convention on the Rights of the Child (1989) does not contain provisions allowing for individual complaints as compared with other human rights treaties (e.g. International Covenant on Civil and Political Rights).

\textsuperscript{78} In addition to a General Comment perhaps also UN guidelines on environmental children’s rights. See, for example, UN Guidelines for the Alternative Care of Children (www.un.org/en/ga/64/resolutions.shtml, accessed on May 28, 2012).
relevant to environmental children’s rights – can receive individual complaints and are able to conduct country-visits to investigate particularly serious cases with great relevance for their mandate.

The Universal Periodic Review procedure of the UN Human Rights Council offers a relatively new form of human rights monitoring. It has existed since 2006 and enables the periodical supervision of the human rights obligations of each UN member state. The procedure is characterised by the other states being able to make recommendations on the basis of human rights treaties and other voluntary commitments made by the state under review. The review procedure itself is based on information supplied by the state concerned, the UN human rights bodies and civil society groups. The fact that various obligations of a state may be adduced as references fundamentally offers a good opportunity to point to environmental problems of states with a human rights dimension to them.

The review practice shows that environmental protection does play a role in state recommendations. However, in the child rights-based recommendations of the states, as well as in most civil society submissions on children’s rights there has hitherto been a lack of clear environmental references.

The Universal Periodic Review procedure should be used more often in future in order to indicate environmental child rights violations. The scope of the review mandate is a good argument for that.

For example, the Special Procedures on the right to food, health, adequate housing and the human rights obligations related to environmentally sound management and disposal of hazardous substances.


For example, environmental treaties.

On the relevance of environmental rights during the UPR see e.g. the collective submission by civil society environmental organisations for reviewing Haiti of 3–13 October, (http://ijdh.org/archives/17938, accessed on May 28, 2012).

For further information on the review practice see www.upr-info.org (accessed on May 28, 2012).

The UN’s special procedures as human rights monitoring mechanisms: the Rapporteur on human rights and hazardous substances

On the basis of existing information from civil society, inter alia, the UN Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances can conduct investigations in countries in which there are significant problems with handling toxic and dangerous substances and waste (country visits). The visits enable an exchange with affected groups and the inspection of places that can give information about the human rights impacts of toxic substances. The Special Rapporteur can make detailed recommendations on this basis in order to achieve better monitoring, and a reduction or removal of existing problems. In the last few years the Special Rapporteur has, for example, examined the recycling of electrical waste in India and visited dump sites for uranium-tailings and storages for obsolete pesticides in Kyrgyzstan. Further he has pursued the disposal of toxic waste in Cote d’Ivoire and rated the effects of small-and medium-scale gold and diamond mining in Tanzania. The Special Rapporteur also receives individual complaints from individuals or groups whose rights have been violated by the impacts of toxic or dangerous substances, and enters into a constructive dialogue with governments or companies (!) concerned, in order to seek solutions for existing problems.

4. A child rights approach to environmental protection and sustainable development

In the discussion about the central future questions of climate change, climate protection, adaptation and the conservation of biodiversity, few development policy actors have hitherto advocated for an explicit consideration of the rights of children and young people in poverty-oriented climate and biodiversity policy, empowering them to participate meaningfully. (Federal Ministry for Economic Cooperation and Development, 2011)

In international environmental policy, which is dominated by scientific, technical or economic arguments, the social and human dimension of environmental problems was a peripheral topic for a long time. Consequently children’s and human rights played only a minor role in international treaties or action to protect the environment. The UN Conference on Environment and Development in Rio (1992) marked a change of direction. It made procedural rights, including access to information, participation in decision-making and access to justice a part of international environmental policy. Underlying that is the conviction that empowering and involving the public concerned makes effective environmental protection possible and strengthens the legitimacy of environmental decisions. Principle 10 of the Rio Declaration states:

»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. State 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.«

Since then, procedural rights have been included in many national environmental legislations and multilateral environmental agreements, albeit mostly in the form of general statements of commitment. Access to legal remedies in environmental issues has hitherto not been guaranteed in a single global environmental treaty. The UN Framework Convention on Climate Change e.g. contains rather non-binding phraseology and only addresses access to information and participation in decision-making (Article 4/6). It thereby does not give victims of climate change a genuine opportunity to enforce their human rights by taking legal action.

Children have the right to be heard on environmental and sustainability matters

Effective participation offers children the most direct way of claiming their rights and sharing in determining their lives themselves. Children thus have the right to be heard and taken seriously in all matters affecting them (Art. 12(2) CRC).

The Child Rights Committee further specified in its General Comment on Article 12 CRC that since the implementation of children’s rights »deals with a broad range of problems, […] which are of interest not only to the child as an individual, but to groups of children and children in general«, meaningful participation requires that children have an opportunity to speak as a group with specific needs and interests, knowledge and skill. In questions of sustainability and environmental protection, the participation of children is urgently necessary. After all children are particularly affected by environmental degradation, because they are still developing and are very vulnerable. Children must also live with the long-term consequences of environmental pollution and the unsparing exploitation of natural resources. On the other hand, they are experts on their natural environment because they constantly move around in it. Above all, however: children will inherit responsibility for the earth. Since the Rio Conference of 1992 children have in fact been more and more frequently able to participate in decision-making and implementation processes concerned with environmental protection and sustainable development. Yet in many areas there is still a lack of opportunities for meaningful participation. The reasons for this are the absence of child-friendly information, short speaking time and, most often, the exclusion from actual decision-making, that usually takes place behind closed doors.

24 See General Comment No. 12 of the CRC Committee, §§73 and 87.
That is far from constituting a human rights-based environmental and sustainability policy. And that has serious consequences, particularly for children. They are doubly punished because they have to live with the repercussions of short-sighted action not only now but later. An effective child rights approach recognises children as autonomous rights-holders and stresses their role as victims of environmental degradation and as pioneers in environmental policy. Such an approach draws attention to the importance of power relations and points to inequality and discrimination. A child rights-based environmental and sustainability policy is centred on the basic needs of children and guarantees that children are informed and heard on questions affecting «their» environment. The norms and principles of the CRC, above all child rights with environmental implications, must become guidelines for national and international environmental and sustainability policy. The legal preconditions for this already exist. The CRC is the most frequently ratified human rights treaty and the States Parties are expressly obliged to take all appropriate measures for the implementation of child rights (Article 4 CRC). For this to happen it is necessary for child rights to reach into all policy areas affecting children. That includes, in particular, environmental and sustainability policy.

A child rights-based climate policy

National and international measures to reduce CO₂ emissions or adapt to climate change are not just good deeds but part of the state obligations derived from the CRC and other human rights treaties. Articles 3 and 4 of the UN Framework Convention on Climate Change (UNFCCC) require states to «protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities». Unfortunately, international climate policy primarily strives for equity between states – if at all. Children’s rights give meaning to Articles 3 and 4 of the UNFCCC by reminding all states of their obligation to protect children from the effects of climate change – at home and globally. Targets for reducing harmful emissions must be set in such a way that there is no threat to child rights today and in future. The same applies to the implementation of climate protection and adaptation measures. Monitoring and accountability mechanisms must be strengthened and made accessible to affected children.

5. Recommended actions to improve the protection of environmental child rights

Children have a right to an environment that enables them to grow up healthy and gives them positive future prospects. The terre des hommes campaign launched in 2011 draws attention to this and pursues the aim of strengthening children’s rights, nationally and internationally, in view of massive environmental destruction.

**馳 an des hommes advocates for strengthening the normative and institutional framework to protect environmental children’s rights.**

The most important monitoring body for the worldwide implementation of child rights is the UN Committee on the Rights of the Child. It is also responsible for interpreting the Convention. It is our goal that the Committee clearly asserts the importance of a healthy environment for implementing the CRC as a whole and as an underlying determinant of individual child rights, at the same time clarifying the linkages between the principles of the CRC and those of sustainable development.

The UN Child Rights Committee, since 1992, conducts annual Days of General Discussion. The aim is to get experts and civil society organisations together in order to gain a deeper understanding of the content and implications of the Convention. Precisely this understanding has been missing to date, as far as the mutual dependence of environmental and children’s rights protection is concerned. The topic of environmental children’s rights belongs on the agenda of the Committee. A Day of Discussion may lay the basis for a future General Comment that, in addition to highlighting the environmental preconditions for the rights enshrined in the CRC, could address salient questions concerning, inter alia, the extraterritorial obligations of States Parties regarding global environmental damage such as climate change and loss of biological diversity; the role and duties of private actors; or the implementation and operationalization of a child rights approach to environmental protection and sustainable development. At present the UN Committee is working on General Comments concerning Articles 24 and 31 and child rights and the business sector. These three Comments should systematically take account of environmental challenges as a cross-cutting issue.

As soon as the new CRC optional protocol takes effect, the Child Rights Committee will also receive individual complaints from children. Human rights organisations can help children to raise awareness about massive violations of their environment-related rights and thereby highlight the child-rights relevance of global ecological damage. The complaints will contribute to bringing out even more clearly the environmental aspects of child rights and specifying the resultant obligations of CRC States Parties. Like the new communications procedure for children, other human rights complaints mechanisms at the international, regional and national level must be used in order to draw attention to environmental children’s rights. What is possible was shown by the 43 children who in 1992 took action before the constitutional court of the Philippines against the cutting down of the rain forest.

The Universal Periodic Review of the UN Human Rights Council should be used more intensively in future, also by civil society, in order to draw attention to violations of environment-related child rights. In spite of the broad scope of the review mandate, the child-rights-based recommendations to states have hitherto lacked clear references to environmental problems.

At its 19th session, the UN Human Rights Council established a mandate for an Independent Expert on human rights and the environment to explore, inter alia, the human rights obligations »relating to the enjoyment of a safe, clean, healthy and sustainable environment«. The mandate must be used to bring out specific threats to children and future generations. Numerous other special procedures of the UN Human Rights Council can contribute to strengthening environmental children’s rights. They include, in particular, the mandates concerning the right to water, health, adequate housing and food and the mandate on the human rights obligations related to environmentally sound management and disposal of hazardous substances.

Environmental destruction is one of the major human rights challenges of the 21st century. When seeking appropriate answers international recognition of a general right to a healthy environment must at least be considered, as proposed by the UN High Commissioner for Human Rights in her study on the relationship between human rights and the environment (2011). The right to a »healthy« environment is, above all, necessary to protect children because they are particularly sensitive and vulnerable to environmental threats. The right to a healthy environment also has the potential to prevent the unsparing exploitation of natural resources and the loss of biological diversity, guaranteeing that children and future generations find a world worth living in. The recognition of a right to a safe, healthy and balanced environment is thus a long-term aim of strengthening environmental children’s rights.
**terre des hommes calls for the creation of Ombudsperson for future generations.**

The rights, interests and needs of future generations must be adequately considered in the decisions of the present generations. For that they need a political lobby. Ombudsperson for future generations can create a counterbalance to the predominant short-term mindset in that they are competent but independent actors who monitor decisions in terms of their environmental and future effects. They listen to public concerns and receive complaints, and they serve as mouthpieces between those concerned and politicians.

Ombudsperson for future generations should be set up at the international, national and local levels. Many violations of the rights of future generations have reached a global extent (e.g. climate change) or are rooted in the international political or economic system (e.g. overexploiting resources), so that solutions can only be found at the international level. At the same time, it is important to create institutions accessible to children at the places where they live and are experts, i.e. at the local level.

**terre des hommes calls for more account to be taken of the norms and principles of the Convention on the Rights of the Child in national and international environmental and sustainability policy (Child Rights Approach).**

In many fields of environmental and sustainability policy, e.g. climate policy, there has hitherto been a lack of a clear commitment to children’s rights that must change. Children’s rights should be on the national and international sustainability agenda.

Environment-related child rights such as the right to health, food, water etc must also be respected and protected in other policy areas heavily impacting on environmental and sustainability issues such as the economy. terre des hommes calls for internationally binding rules that oblige companies worldwide to observe human rights.

Already initiatives for corporate responsibility at different levels show how this can operate. Examples at the international level are the former »Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises«, but also national corporate social responsibility (CSR) approaches and institutions that respect children’s rights and develop procedures to implement them.

**terre des hommes, above all, calls for the participation of children:**

Children have a right to raise their voices on issues concerning their environment and their future, and to be taken seriously. Children must be allowed to participate in political debates and decisions at the local, national and international levels. In many countries terre des hommes and its partner organizations run child rights »audits«. Children ask their peers about how children’s rights are implemented in their life world and present their results to the public and responsible politicians. As the results show, children have a fine sense of violations of their environmental rights.

**ACT NOW – Protect environmental child rights!**
Further reading and Links

**Further reading**


**Links**


All General Comments of the UN Committee on the Rights of the Child: www2.ohchr.org/english/bodies/crc/comments.htm

All General Comments of the UN Committee on Economic, Social and Cultural Rights: www2.ohchr.org/english/bodies/cersc/comments.htm

All Special Procedures of the UN Human Rights Council: www2.ohchr.org/english/bodies/hr/council/index.htm


Johannesburg Declaration on Sustainable Development: www.un.org/esa/sustdev/documents/WSSD_POI_PDL/English/POI_PD.htm


(Stockholm) Declaration of the UN Conference on the Human Environment: www.umn.edu/humanrts/instree/humanenvironment.html


(Further Reading and Links accessed on April 14, 2012)
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