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Discussion Paper:

Children's Right to a Healthy Environment
in East Asia and the Pacific



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Cover photo

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

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List of Abbreviations

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

Preface

Purpose and Scope of Paper

- 1.1 This discussion paper (the **Paper**) has been prepared to:
 - (a) facilitate the exchange of knowledge and stimulate discussion on children's right to a healthy environment in East Asia and the Pacific (the **Region**),
 - (b) consider how different legal systems approach children's right to a healthy environment in the Region,
 - (c) help identify strategies and best practices that can be implemented to promote children's right to a healthy environment, and
 - (d) improve national and regional stakeholders' understanding of the relationship between child rights and environmental issues.
- 1.2 The findings in this Paper are based upon a review of the laws relating to the right of the child to a healthy environment from a sample of five countries in the Region: Cambodia, Fiji, Indonesia, Mongolia and Viet Nam (together the **Review Countries**).
- 1.3 The laws considered by this Paper include laws that were enacted in the Review Countries since the adoption of the *Convention on the Rights of the Child 1989*¹ (**CRC**) and August 2019. The CRC entered into force for each of the Review Countries within a few years of its adoption.²
- 1.4 This Paper is informed by the report of the former United Nations Special Rapporteur on Human Rights and the Environment (**UNSR HRE**) on children's rights and the environment.³ The preparation of this Paper began prior to the second expert consultation for the Children's Environmental Rights Initiative (**CERI**),⁴ which the authors attended. It therefore addresses and is informed by topics discussed at that CERI expert consultation⁵ and has since been updated to incorporate feedback from attendees and other stakeholders.

Structure of Paper

- 1.5 This Paper is comprised of the following sections:
 - (a) **Executive Summary:** this section summarises the extent to which children's right to a healthy environment is supported by national law in the Review Countries. It identifies common themes, examples of notable challenges and priority issues, as well as examples of positive developments and the different approaches adopted by the countries considered. It concludes with recommendations aimed at promoting children's right to a healthy environment in the Region.
 - (b) **Parts I, II and III:** which provide more detailed findings from the Review Countries on the following themes:
 - (i) progress in recognising children's right to a healthy environment,

¹ Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

² Cambodia acceded to the *Convention on the Rights of the Child* in 1992; Fiji ratified in 1993; Indonesia ratified in 1990; Mongolia ratified in 1990; and, Viet Nam ratified in 1990.

³ Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 37th sess, Agenda item 3, UN Doc A/HRC/37/58 (26 February – 23 March 2018) ('UNSR HRE Report').

⁴ See Children's Environmental Rights Initiative <www.childrenvironment.org>. The second expert consultation was held in Indonesia over 22 – 24 October 2019.

⁵ See Global Initiative on Advancing Children's Right to a Healthy Environment, *Outcome Report for the Regional Expert Consultation for East Asia and the Pacific, Bogor, Indonesia: 22-23 October 2019* <<https://www.childrenvironment.org/reports>>.

- (ii) children’s education, engagement and participation in environmental affairs, and
- (iii) children’s right to a healthy environment and the role of the business sector.

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

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

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

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

- (i) an overview table (in blue) providing detail that is relevant to the legal context of children’s right to a healthy environment in that country, e.g. whether that Review Country has ratified the Optional Protocols to the CRC, and
- (ii) a detailed table (in orange) which provides a categorised list of national legal instruments that have been located and assessed as responsive to children’s right to a healthy environment in that Review Country, i.e. categorised according to the matters listed in the Analysis Categories Table.

Methodology and Limitations of Paper

- 1.6 Research was based on desk studies of primary legal materials and academic literature, consultations with UNICEF Country Offices,⁷ the work of the pro bono legal team of the UNSR HRE⁸ and discussions with experts and youth participants of the second CERI expert consultation.⁹
- 1.7 The scope of national laws considered include laws enacted in the Review Countries between the adoption of the CRC in 1989 and August 2019. The methodology for selecting relevant national legal instruments involved identifying express references to children’s right to a healthy environment, and otherwise assessing whether a national legal instrument could

⁶ UNSR HRE Report (n 3).

⁷ UNICEF Country Offices were consulted in relation to Fiji, Indonesia and Mongolia.

⁸ Inputs from local lawyers were obtained on a non-reliance basis in relation to Indonesia, Mongolia and Viet Nam.

⁹ See para 1.4 of this Paper for more details.

be interpreted as applicable. A broad approach to interpretation was adopted. As such, the Analysis Matrices capture national legal instruments that expressly refer to the right to a healthy environment in general, or can otherwise be interpreted as applicable to substantive elements of children’s right to a healthy environment. As the right of the child to a healthy environment has yet to be defined in international law, the elements of that right were largely modelled on the 2018 report of the former UNSR HRE on the rights of children in relation to the environment, as set out in the Analysis Categories Table.¹⁰ The United Nations Sustainable Development Goals (**SDGs**) were not a focus of this study beyond aspects that were already considered in the aforementioned UNSR HRE report. There was no specific consideration of issues relating to gender, disability, indigenous peoples, migration or displacement within the methodology of this Paper.

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

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

Executive Summary

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

- 2.1 All of the Review Countries (Cambodia, Fiji, Indonesia, Mongolia and Viet Nam) are vulnerable to the impacts of climate change and environmental degradation, whether by reason of their geography or economic factors, such as being in a state of rapid development, industrialisation and urbanisation. Climate and environmental challenges such as increased average temperatures, air pollution, water pollution, deforestation, poor waste management, unsustainable use of land and natural resources, and the use of chemicals and pesticides were identified across all of the Review Countries, noting that the Region is also one of the most vulnerable to climate-related disasters.¹¹
- 2.2 In this context there are significant environmental challenges that risk undermining children's right to a healthy environment across all of the Review Countries. For example, children are vulnerable to arsenic exposure in many regions of Cambodia,¹² extreme levels of air pollution in Mongolia and Viet Nam,¹³ the impacts of deforestation and loss of biodiversity in Indonesia,¹⁴ and extreme weather events such as storms and flooding, as well as slow-onset events such as sea level rise, in Fiji.¹⁵ Scientific research indicates that for a variety of reasons, the impacts of these environmental challenges are different or more pronounced for children than they are for adults.¹⁶

The CRC and children's right to a healthy environment

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

¹¹ See United Nations Office for Disaster Risk Reduction, *Global assessment report on disaster risk reduction 2019* (2019) <<https://www.undrr.org/publication/global-assessment-report-disaster-risk-reduction-2019>>. See, e.g., for Cambodia, Johanna Buschmann et al, 'Arsenic and Manganese Contamination of Drinking Water Resources in Cambodia: Coincidence of Risk Areas with Low Relief Topography' (2007) 41(7) *Environmental Science and Technology* 2146; for Fiji, Australian Department of Foreign Affairs and Trade, *Australia's commitment to climate change action in Fiji* (10 October 2018) <<https://www.dfat.gov.au/about-us/publications/Pages/australias-commitment-to-climate-change-action-in-fiji>>; for Indonesia, WHO, *Climate and health country profile – 2015: Indonesia* (2015) <<http://origin.who.int/globalchange/resources/country-profiles/PHE-country-profile-Indonesia.pdf>>; for Mongolia, Green Climate Fund, *Mongolia country programme* (19 March 2019) 6 <<https://www.greenclimate.fund/document/mongolia-country-programme>>; for Viet Nam, The World Bank and Ministry of Planning and Investment of Viet Nam, *Viet Nam 2035: Toward prosperity, creativity, equity and democracy* (Report, 2016) 37 <<https://openknowledge.worldbank.org/handle/10986/23724>>.

¹² See Kongkea Phan et al, 'Arsenic contamination in the food chain and its risk assessment of populations residing in the Mekong River basin of Cambodia' (2013) 262 *Journal of Hazardous Materials* 1064; Michael Berg et al, 'Magnitude of arsenic pollution in the Mekong and Red River Deltas – Cambodia and Vietnam' (2007) 372(2-3) *Science of the Total Environment* 413.

¹³ See, for Mongolia, John Knox, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his mission to Mongolia*, Human Rights Council, 37th sess, UN Doc. A/HRC/37/58/Add.2 (2 May 2018) 7 [36]. UNICEF reports that up to 435 children died in Ulaanbaatar in 2015 as a result of pneumonia related to air pollution: UNICEF, *Mongolia's air pollution crisis – A call to action to protect children's health* (February 2018) 16 <<https://www.unicef.org/mongolia/reports/call-action-protect-childrens-health>>; for Viet Nam, Nguyen Thi Trang Nhung et al, 'Acute effects of ambient air pollution on lower respiratory infections in Hanoi children: An eight-year time series study' (2018) 110 *Environment International* 139.

¹⁴ See Greenpeace, *Forests – Indonesia* <<https://www.greenpeace.org.au/what-we-do/protecting-forests/forests-indonesia/>>.

¹⁵ See United Nations Climate Change, *How Fiji is impacted by climate change* (9 February 2017) <<https://unfccc.int/news/how-fiji-is-impacted-by-climate-change>>.

¹⁶ See World Health Organisation, *Children's environmental health* <https://www.who.int/health-topics/children-environmental-health#tab=tab_2>.

¹⁷ See Thoko Kaime, 'Children's Rights and the Environment' in Kilkelly, Ursula and Liefwaard, Ton (eds) *International Human Rights of Children* (Springer, 2019) 563.

¹⁸ See Analysis Matrices. Cambodia acceded to the CRC in 1992; Fiji ratified in 1993; Indonesia, Mongolia and Viet Nam each ratified in 1990.

communications procedure,¹⁹ which allows the Committee on the Rights of the Child to hear complaints from children, groups of children, or their representatives that claim a violation by the State of their rights under the CRC.

Figure 1: Articles from the *Convention on the Rights of the Child 1989* that are relevant to children's right to a healthy environment²⁰

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

¹⁹ Opened for signature 19 December 2011, UNGA 66th sess, Agenda Item 64, UN Doc No. A/RES/66/138 (entered into force 14 April 2014); Mongolia ratified in 2015.

²⁰ Informed by the analysis of Kaime (n 17). This is not an exhaustive list.

CRC article	Full text of article
	adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; ... (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents.
27(1)	1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
29(1)(e)	1. States Parties agree that the education of the child shall be directed to: ... (e) The development of respect for the natural environment.
31	1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.
42	States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

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

- 2.4 At a national level, the majority of Review Countries explicitly recognise and protect a legal right to a healthy environment in their national constitutions, with Cambodia being the only exception.²¹ Constitutional protection of a right is significant because a constitution is the supreme source of law in national legal systems. Of the Review Countries, only Fiji explicitly draws a link between its constitutional right to a healthy environment and children, by providing that this right includes the protection of the natural world for the benefit of “*present and future generations*”.²² This is significant in the context of children's rights, as children are typically considered to represent the conceptual link between present and future generations.
- 2.5 Most of the Review Countries recognise the right to a healthy environment in national legislation, but explicit links to children's right to a healthy environment are limited (see Part I). Only Viet Nam creates an express connection between children's rights and environmental protection, by requiring environmental protection to be in harmony with the protection of children's rights.²³ Where the right to a healthy environment is expressed as a right for all citizens without any child-specific references, the effect of such expression should be to protect the right to a healthy environment in respect of children. The risk, however, is that child-specific issues might not be adequately considered.²⁴
- 2.6 At a regional level, ASEAN member States Cambodia, Indonesia and Viet Nam have adopted the non-binding *ASEAN Human Rights Declaration*, which expressly recognises a

²¹ See Analysis Matrices from page 47 of this Paper.

²² *Constitution of the Republic of Fiji 2013* art 40(1).

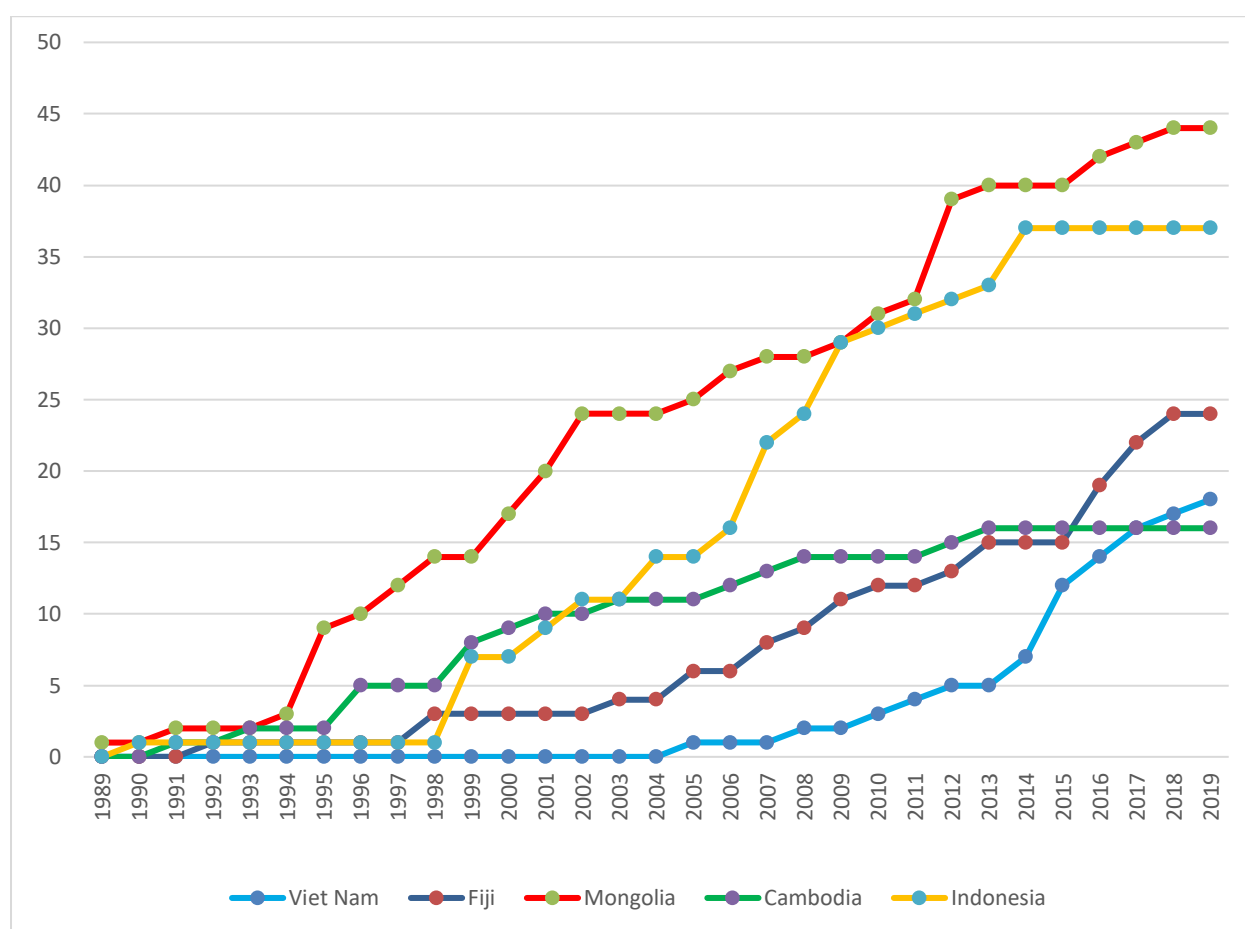
²³ *Law on Environmental Protection No.55/2014* (Viet Nam) art 4(2) states: “*Environmental protection must harmonize with the economic growth, social security, assurance about the children's right, promotion of gender equality, development and conservation of biodiversity, response to climate changes,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

²⁴ See Part I from page 20 of this Paper for further details.

right to a safe, clean and sustainable environment,²⁵ although this right is not specifically directed at children.

2.7 Our findings indicate that there has been a steady increase in national legislation relevant to children’s right to a healthy environment across the Review Countries.²⁶ Figure 2 below illustrates that almost 140 relevant national laws have been enacted across the Review Countries between 1989 and 2019.²⁷ Further, as displayed in Figure 3, there have been several sharp increases in enacted legislation across the Review Countries during periods of legislative reform.

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

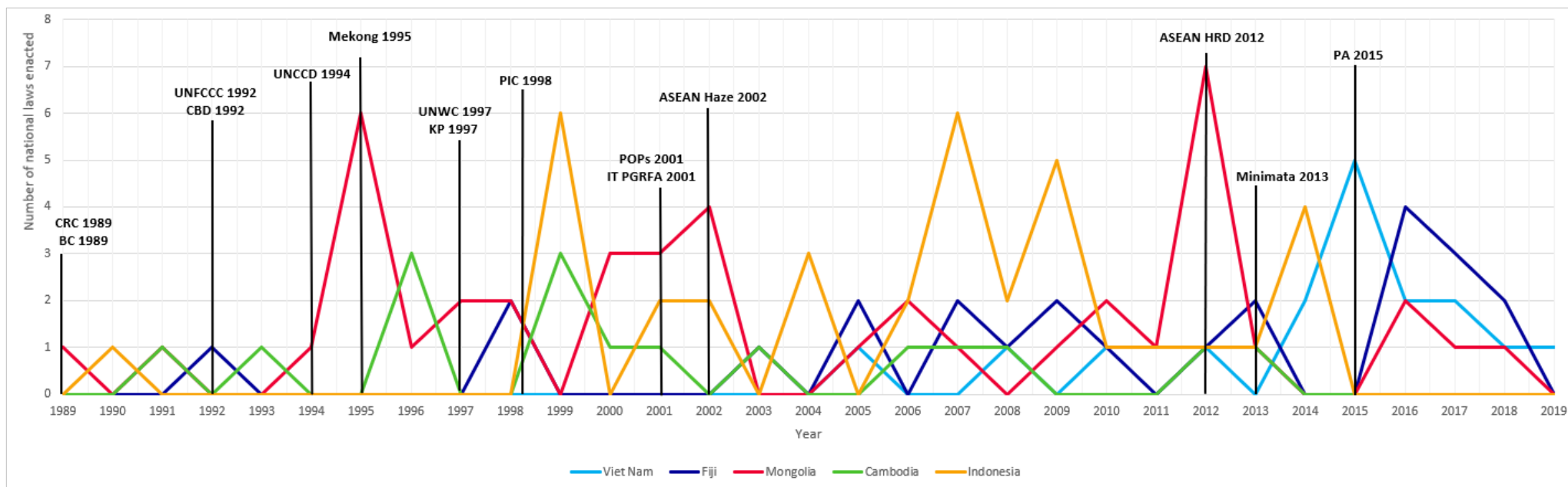


²⁵ ASEAN Human Rights Declaration 2012 art 28(f).

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

²⁷ See para 1.7 of this Paper for our assessment methodology.

Figure 3: Enactment of national legislation and international treaties relevant to children’s right to a healthy environment across Review Countries since 1989



Legend

Abbreviation	Full name	When did the Review Countries join the treaty?
CRC 1989	United Nations Convention on the Rights of the Child 1989	Cambodia (acceded 1992), Fiji (ratified 1993), Indonesia (ratified 1990), Mongolia (ratified 1990), Viet Nam (ratified 1990)
BC 1989	The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 1989	Cambodia (acceded 2001), Indonesia (acceded 1993), Mongolia (acceded 1997), Viet Nam (acceded 1995)
UNFCCC 1992	United Nations Framework Convention on Climate Change 1992	Cambodia (acceded 1995), Fiji (ratified 1993), Indonesia (ratified 1994), Mongolia (ratified 1993), Viet Nam (ratified 1994)
CBD 1992	Convention on Biological Diversity 1992	Cambodia (acceded 1995), Fiji (ratified 1993), Indonesia (ratified 1994), Mongolia (ratified 1993), Viet Nam (ratified 1994)

Abbreviation	Full name	When did the Review Countries join the treaty?
UNCCD 1994	United Nations Convention to Combat Desertification 1994	Cambodia (ratified 1997), Fiji (acceded 1998), Indonesia (ratified 1998), Mongolia (ratified 1996), Viet Nam (acceded 1998)
Mekong 1995	Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin 1995	Cambodia (signed 1995), Viet Nam (signed 1995)
UNWC 1997	Convention on the Law of the Non-Navigational Uses of International Watercourses 1997	Viet Nam (acceded 2014)
KP 1997	Kyoto Protocol 1997	Cambodia (acceded 2002), Fiji (ratified 1998), Indonesia (ratified 2004), Mongolia (acceded 1999), Viet Nam (ratified 2002)
PIC 1998	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998	Cambodia (acceded 2013), Indonesia (ratified 2013), Mongolia (ratified 2001), Viet Nam (acceded 2007)
POPs 2001	Stockholm Convention on Persistent Organic Pollutants 2001	Cambodia (ratified 2006), Fiji (ratified 2001), Indonesia (ratified 2009), Mongolia (ratified 2004), Viet Nam (ratified 2002)
IT PGRFA 2001	International Treaty on Plant Genetic Resources for Food and Agriculture 2001	Cambodia (approved 2002), Fiji (acceded 2008), Indonesia (acceded 2006), Mongolia (acceded 2018)
ASEAN Haze 2002	ASEAN Agreement on Transboundary Haze Pollution 2002	Cambodia (ratification or approval 2006), Viet Nam (ratification or approval 2003)
ASEAN HRD 2012	ASEAN Human Rights Declaration	Cambodia (adopted 2012), Indonesia (adopted 2012), Viet Nam (adopted 2012)
Minamata 2013	Minamata Convention on Mercury 2013	Cambodia (signed 2013), Indonesia (ratified 2017), Mongolia (ratified 2015), Viet Nam (approved 2017)
PA 2015	Paris Agreement 2015	Cambodia (ratified 2017), Fiji (ratified 2016), Indonesia (ratified 2016), Mongolia (ratified 2016), Viet Nam (approved 2016)

- 2.8 Each of the Review Countries, with the possible exception of Cambodia, has legislation or policy in place that directly or indirectly addresses, to a greater or lesser extent, most of the substantive elements of children’s right to a healthy environment. Figure 4 displays a gap analysis drawn from the Analysis Matrices,²⁸ and indicates an assessment of the law and policy of the Review Countries against a number of substantive and procedural elements of children’s right to a healthy environment.²⁹
- 2.9 Cambodia has more gaps in Figure 4 than the other Review Countries, with no law or policy affecting more than half of the categories that indicate substantive and procedural elements of children’s right to a healthy environment.³⁰ None of the Review Countries express a clear legal position on the responsibility of businesses to respect children’s right to a healthy environment. Only Indonesia and Viet Nam include references to children in their Nationally Determined Contributions (**NDCs**)³¹ under the *United Nations Framework Convention on Climate Change 1992*³² (**UNFCCC**) regime, whereas only Fiji has submitted its National Adaptation Plan (**NAP**) in which child-specific measures identify children as “*active agents of change*”.³³ Notably, in each Review Country there were a variety of legal instruments (typically aimed at child protection, human rights or environmental matters) that addressed different substantive or procedural elements of children’s right to a healthy environment, rather than a singular unified source of law.³⁴

Figure 4: Gap analysis of national legal instruments that directly or indirectly address key elements of children’s right to a healthy environment³⁵

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

²⁸ These observations are of course subject to the limitations of this study, as outlined at paras 1.7 – 1.8 of this Paper.

²⁹ The methodology for our assessment is outlined at para 1.7 of this Paper.

³⁰ This observation is of course subject to the limitations of this study, as outlined at paras 1.7 – 1.8 of this Paper.

³¹ See Christina Kwauk et al, *Girls’ education in climate strategies – Opportunities for improved policy and enhanced action in Nationally Determined Contributions* (The Brookings Institute Global Economy & Development Working Paper 133, December 2019) <<https://www.brookings.edu/wp-content/uploads/2019/12/Girls-ed-in-climate-strategies-working-paper-FINAL.pdf>>.

³² *United Nations Framework Convention on Climate Change* (9 May 1992) 1771 UNTS 107, 31 ILM 849 (entered into force 21 March 1994).

³³ Republic of Fiji National Adaptation Plan, *A pathway towards climate resilience* (2018) <https://www4.unfccc.int/sites/NAPC/Documents/Parties/National%20Adaptation%20Plan_Fiji.pdf> 38.

³⁴ See Analysis Matrices from page 47 of this Paper.

³⁵ This table reflects the categories used in the Analysis Categories Table at page 47 of this Paper and provides an overview of the data captured in the Analysis Matrices from page 49 onwards.

	Category	Cambodia	Fiji	Indonesia	Mongolia	Viet Nam
8	Children's rights to an adequate standard of living	✓	✓	✓	✓	x
9	Children's rights to play and recreation	x	✓	✓	✓	✓
10	Children's rights to an environmental education	x	✓	✓	✓	✓
11	State obligation to collect, update and disseminate environmental information	x	✓	✓	✓	✓
12	Public access to environmental information	✓	✓	✓	✓	✓
13	Children's rights to express views and have them considered	x	✓	✓	✓	✓
14	Participatory rights of children on environmental matters	x	✓	✓	✓	✓
15	Protection of children from reprisals for participating or expressing views on environmental matters	x	✓	✓	✓	x
16	Effective remedies for children's rights violation	x	✓	✓	✓	✓
17	Non-discrimination in children's equal enjoyment of rights relating to a safe, clean, healthy and sustainable environment	x	✓	✓	✓	✓
18	State obligation to conduct a 'child-rights impact assessment' for environmental impact of proposed projects	x	x	X	x	x
19	State obligation to conduct a 'child-rights impact assessment' for environmental impact of proposed policies	x	x	X	x	x
20	Regulation of businesses (including State-owned) to protect children from environmental harm. Includes obligation for businesses to conduct 'child-rights due diligence' for actual and proposed actions on the rights of children through environmental harm.	x	x	✓	✓	x

	Category	Cambodia	Fiji	Indonesia	Mongolia	Viet Nam
21	Binding obligations on businesses to comply with the: Guiding Principles on Business and Human Rights; Children's Rights and Business Principles; Recommendations of the Committee on the Rights of the Child in its general comment No. 16.	x	x	X	x	x
22	State obligation to adopt/ implement environmental standards consistent with the best available science and international health and safety standards, or on the basis of the precautionary principle	x	✓	✓	✓	✓
23	State obligation to cooperate with other States to address global/transboundary harm.	x	x	✓	✓	✓
24	State obligation to provide access to court remedies for environmental harm by businesses in their State of incorporation as well as where the harm is alleged to occur	x	✓	✓	✓	✓

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

- 2.10 As outlined in the *Framework Principles on Human Rights and the Environment*,³⁶ the obligations of States in relation to human rights and the environment include duties relating to education and public awareness, freedom of expression, association and peaceful assembly, public access to environmental information and participation in environmental decision-making.³⁷ In the context of children's rights, fulfilling these obligations ensures that children can influence environmental policy that affects them, and also strengthens the capacity of children to protect themselves from environmental harm.³⁸
- 2.11 As set out in Part II of this Paper, examples were found in all Review Countries of children and youth expressing their views on environmental affairs via organisations, events and initiatives that were led by, or focussed on, the active engagement and participation of children and youth. There were particularly clear and frequent examples of children and youth expressing their views on the subject of climate change. Various strategies, initiatives

³⁶ Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 37th sess, UN Doc A/HRC/37/59 (24 January 2018) annex.

³⁷ Ibid principles 5-10.

³⁸ UNSR HRE Report (n 3) [39].

and other practices to support child and youth engagement and participation in environmental affairs were also found across the Review Countries.³⁹

- 2.12 With the exception of Cambodia, all of the Review Countries legally recognise the rights of children and youth to participate in decision-making and rights to an environmental education. All of the Review Countries recognise public rights of access to environmental information in law, yet practical access to this information remains a challenge for children.⁴⁰
- 2.13 Despite legal recognition of the rights of children to participate in environmental matters, children continue to be dismissed, trivialised or obstructed by adults and authorities in their attempts to address matters that affect their rights. There are also significant concerns around adequate protection for human rights defenders, including environmentalists and children's rights defenders, across most of the Review Countries. The existence of laws recognising children's rights to participate in environmental decision-making or to express their views on environmental affairs is no guarantee of effectiveness where there is inadequate protection from reprisals.⁴¹

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

- 2.14 It is well recognised that businesses have a responsibility to respect children's rights,⁴² as well as human rights in general.⁴³ Children experience differentiated impact compared to adults when their rights are adversely affected by the operations and activities of business enterprises. For example, children are often politically voiceless, children typically face difficulty securing remedies through the courts or other mechanisms, and childhood is a unique state of development such that a breach of children's rights can have enduring lifelong consequences.⁴⁴ Therefore, any consideration of the adverse impact of business activities on children's rights, including their right to a healthy environment, requires an appreciation of child-specific concerns. The *Children's Rights and Business Principles*⁴⁵ provide a framework for understanding and addressing the impact of business on the rights and well-being of children⁴⁶ and expressly recognise that all businesses should respect and support children's rights in relation to the environment.⁴⁷
- 2.15 The gap analysis at Figure 4 demonstrates that none of the Review Countries clearly reference key international standards on the impacts of business activities on children's rights in national law or policy; namely the UN Guiding Principles on Business and Human Rights (**UNGPs**),⁴⁸ *Children's Rights and Business Principles*, or recommendations of the Committee on the Rights of the Child in its General Comment 16.⁴⁹ Further, none of the Review Countries require child-specific concerns to be considered as part of legally required environmental impact assessments for proposed projects or policies.⁵⁰

³⁹ See Part II of this Paper for further details.

⁴⁰ See Part II of this Paper for further details.

⁴¹ See Part II of this Paper for further details.

⁴² See Committee on the Rights of the Child, *General Comment No.16 (2013) on State obligations regarding the impact of the business sector on children's rights*, UN Doc CRC/C/GC/16 (17 April 2013); UNSR HRE Report (n 3) [62].

⁴³ See United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework* (2011).

⁴⁴ See Committee on the Rights of the Child (n 42) [1].

⁴⁵ *Children's Rights and Business Principles* (2012) <<https://www.unglobalcompact.org/library/63>>. These principles were developed by Save the Children, the United Nations Global Compact and UNICEF.

⁴⁶ *Ibid* 2.

⁴⁷ *Ibid* Principle 7.

⁴⁸ See United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework* (2011).

⁴⁹ Committee on the Rights of the Child (n 42).

⁵⁰ See categories 18 and 19 in Figure 4.

- 2.16 None of the Review Countries have formally published a binding National Action Plan on business and human rights (**NAP BHR**) to disseminate and implement the UNGPs,⁵¹ as recommended by the UN Working Group on Business and Human Rights.⁵² A NAP BHR provides an opportunity for countries to reinforce their policy position on respecting, protecting and fulfilling children’s right to a healthy environment, while providing the business sector with clear guidance on expectations where business activities have the potential to impact this right.
- 2.17 Only Indonesia and Mongolia are in the process of developing a NAP BHR.⁵³ Notably, Indonesia’s national human rights institution launched a recommended NAP BHR in 2017 to inform the nation’s legislative and policymaking agenda, which focuses on the adverse impact of business activities on children’s rights, including their right to a healthy environment.⁵⁴ Indonesia was also the only Review Country to participate in recent negotiations on a draft multilateral treaty on business activities and human rights,⁵⁵ which currently operates to promote children’s right to a healthy environment in a number of ways (see Part III for further details).
- 2.18 Recognising that States typically seek to minimise the risk of adverse impacts from business activities through a variety of legislative and regulatory measures, there are existing laws across the Review Countries that directly and indirectly regulate business respect for children’s right to a healthy environment, by ensuring protection from environmental harm.⁵⁶ A full assessment of these laws was beyond the scope of this study and further analysis would enhance the findings in this Paper.

Key challenges

- 2.19 A number of overarching challenges to effectively fulfil children’s right to a healthy environment were noted through the course of this study:
- (a) **Inconsistent implementation and enforcement of existing national law.** Despite progress in recognising children’s right to a healthy environment in national law and policy, the reality on the ground is one of inconsistent implementation and enforcement across all of the Review Countries.⁵⁷ Constraints in human, technical and financial resources, as well as a lack of adequate capacity at a policymaking or implementation level, are reported in all Review Countries as an impediment to the effective implementation of existing laws that directly or indirectly protect children’s right to a healthy environment. The result is that many powerful rights that have been enacted by the Review Countries are being lost at the implementation level through low levels of monitoring and enforcement. This is particularly challenging in the context of children’s rights, since children typically do not possess legal standing (the right to bring a claim before the court), knowledge of remedy mechanisms, financial resources, or adequate legal representation to press for effective enforcement of their rights.⁵⁸

⁵¹ United Nations Human Rights Office of the High Commissioner, *State national action plans on business and human rights* <<https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>>.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Komnas HAM and ELSAM, *National Action Plan on Business and Human Rights* (May 2017) <<https://globalnaps.org/wp-content/uploads/2017/11/nap-indonesia.pdf>>. See Part III of this Paper for further details.

⁵⁵ Ibid annex I.

⁵⁶ See Analysis Matrices from page 47 of this Paper.

⁵⁷ See Parts I and III of this Paper for further details.

⁵⁸ See Christine Bakker, ‘Climate Change and Children’s Rights’ in Jonathan Todres and Shani M King (eds), *The Oxford Handbook of Children’s Rights Law* (Oxford University Press, 2020) ch 22 [4.3]; Committee on the Rights of the Child (n 42) [I];

To meet their duty to respect, protect and fulfil children's right to a healthy environment, States must be able to implement and enforce their existing laws that directly or indirectly protect that right.

- (b) **A lack of guidance on what constitutes children's right to a healthy environment.** Common to most Review Countries was a lack of clarity on what constitutes children's right to a healthy environment in national law. While the UNSR HRE has provided guidance to clarify the scope of this right in international law,⁵⁹ the research conducted for this Paper indicates that there remains a clear absence of practical guidance to inform and assist children, policymakers, judicial decision-makers, businesses and other relevant stakeholders at a national level. This lack of clarity appears to have contributed to low levels of policy coherence and collaboration across government agencies, as typically the protection of children's rights and the environment are split between the mandates of different government agencies.⁶⁰
- (c) **Low levels of awareness of children's right to a healthy environment in key institutions.** While a significant body of national law addresses environmental or children's rights in each of the Review Countries, and a wide range of actors are involved in each of these fields, the study conducted for this Paper identified infrequent examples of Review Countries drawing a clear connection between the two issues in a coherent regional or national approach to children's right to a healthy environment. This appeared largely attributable to an overarching disconnect between children's rights and environmental rights at a policymaking level and across government agencies.⁶¹

Recommendations

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

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

Human Rights Council, *Report of the United Nations High Commission for Human Rights: Access to justice for children*, 25th sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013).

⁵⁹ UNSR HRE Report (n 3).

⁶⁰ See Parts I and III of this Paper for further details.

⁶¹ See Parts I, II and III of this Paper for further details.

pertaining to children's right to a healthy environment are effectively implemented and enforced.

- (b) **Develop regional guiding principles on children's right to a healthy environment** to provide practical guidance to inform and assist children, policymakers, judicial decision-makers, businesses and other relevant stakeholders with consistent implementation and enforcement of children's right to a healthy environment. It is recommended that the development of guiding principles brings together experts on children's right to a healthy environment, along with key stakeholders from relevant government agencies, policymakers, courts, the business sector, civil society organisations and IGOs focussed on children's and environmental rights. It is further recommended that the development process ensures the meaningful participation of children and requires public consultation. Publication of any guiding principles should include a child-friendly version. Any guiding principles developed at a regional level should take account of and be consistent with efforts to develop normative and practical guidance on children's right to a healthy environment at an international level, including the efforts of the CERI under the auspices of the UNSR HRE, IGOs such as the OHCHR, UNICEF and UNEP, as well as any general comment issued by the Committee on the Rights of the Child on this topic. Further, it is strongly advised that any guiding principles are informed by the obligation of non-discrimination under the CRC, to ensure that the rights of children most vulnerable to environmental harm are adequately considered.
- (c) **Raise public awareness of the nexus between children's rights and the environment at a regional and national level.** States in the Region are encouraged to identify which ministries are responsible for collecting, updating and disseminating environmental information and to allocate sufficient resources to those ministries to ensure that such responsibilities are effectively implemented. States in the Region are urged to raise awareness of children's right to a healthy environment through regional forums, national government, the business sector and civil society. National human rights institutions are encouraged to adopt a multi-sectoral approach that incorporates a focus on, and raises awareness of, the nexus between environmental and children's rights. It is recommended that public information campaigns raise awareness about the content of children's right to a healthy environment and who the rights-holders and duty-bearers of that right are, as well as avenues to access remedies. Such public information campaigns must be practically accessible for children and easy to understand. Pregnant women and parents of young children should be a particular focus, to raise awareness about the environmental risks to unborn children and young infants. States in the Region are advised to assess whether the content of their respective national environmental education curriculums is sufficient to educate children about their environmental rights and to strengthen their capacity to respond to environmental challenges. Children's environmental education should begin early, continue throughout the educational process,⁶² and comprise both formal and informal educational settings such as schools, at home and in the community.⁶³

⁶² See Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 37th sess, UN Doc A/HRC/37/59 (24 January 2018) annex, principle 6.

⁶³ See Committee on the Rights of the Child, *General Comment No.1 (2001), Article 29(1): The Aims of Education*, Convention on the Rights of the Child, UN Doc CRC/GC/2001/1 (17 April 2001) [13].

- (d) **Develop a National Action Plan on business and human rights (NAP BHR) which recognises key international standards and child-specific concerns.** States in the Region are strongly encouraged to develop a NAP BHR and to use the development process as an opportunity to audit whether the current implementation, monitoring and enforcement of existing laws is sufficient to ensure business respect for children's right to a healthy environment. Any gaps can then be identified and addressed. In their NAP BHR, States in the Region are strongly recommended to include a focus on the protection of children's rights, and to commit to clear policy positions on implementing and disseminating key international standards to promote business respect for children's right to a healthy environment; namely the *UN Guiding Principles on Business and Human Rights (UNGPs)*,⁶⁴ *Children's Rights and Business Principles* (especially Principles 4 and 7) and Committee of the Rights of the Child General Comment No 16. Government agencies with a mandate relevant to business respect for children's right to a healthy environment should be clearly identified, to ensure collaboration occurs on this issue. In developing their NAP BHR, States in the Region are urged to undertake public consultation with a wide range of stakeholders, including children, civil society organisations focussed on children's rights, the business sector and relevant government agencies. States in the Region are also advised to ensure that the business sector has sufficient guidance and support to respect children's right to a healthy environment in their activities.
- (e) **Integrate the consideration of children's rights into existing environmental impact assessments for proposed projects and policies.** Where environmental impact assessments form a prerequisite to implementing national policies, or infrastructure, natural resources, urban planning and other projects, States in the Region are encouraged to incorporate specific consideration of the impact of that policy or project on children's right to a healthy environment. States in the Region are advised to also ensure that agencies and institutions responsible for conducting, monitoring and enforcing the outcome of environmental impact assessments are sufficiently informed about children's right to a healthy environment and have access to sufficient resources and capacity to implement their responsibilities effectively.
- (f) **Collaborate with neighbouring States to share best practices and formulate effective responses to transboundary environmental harm to the rights of children where they are not adequately addressed.** States in the Region may seek to collaborate through existing regional mechanisms such as ASEAN, or through establishing new mechanisms that are specifically focussed on children's right to a healthy environment.

⁶⁴ See United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework* (2011).

- (g) **Ensure that children and human rights defenders, including children's rights defenders and environmentalists, are protected from reprisals.** States in the Region are strongly encouraged to ensure that there is sufficient public awareness, understanding and protection of human and children's rights defenders and environmentalists. In particular, children should be protected from reprisals for their participation in environmental decision-making or for otherwise expressing their views on environmental matters.
- (h) **Request that the Committee on the Rights of the Child consider adopting a general comment on children's right to a healthy environment.** A general comment could provide authoritative clarification of the application of the CRC in relation to children's right to a healthy environment and would assist States with implementation of their CRC obligations.
- (i) **Consider becoming parties to the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*** to allow the Committee on the Rights of the Child to hear complaints from children, groups of children, or their representatives, where their rights under the CRC are violated. States in the Region are also encouraged to ensure that children and youth have adequate and effective access to national grievance mechanisms to secure a remedy for any breach of their right to a healthy environment.



Part I

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

Progress in recognising children’s right to a healthy environment

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

- 3.1 With the exception of Cambodia, all of the Review Countries explicitly recognise and protect a legal right to a healthy environment in their national constitutions.⁶⁵ Constitutional protection of a right is significant since a constitution is the supreme source of law in national legal systems. A recent report of the UNSR HRE indicates that this is reflective of a global trend – the right to a healthy environment now enjoys constitutional protection in 110 countries.⁶⁶
- 3.2 In Indonesia, Mongolia and Viet Nam, the right to a healthy environment is expressed in general terms and is not specific to children.⁶⁷ Fiji, however, constitutionally recognises a right to a healthy environment that includes protection of the natural world for present and future generations.⁶⁸ This is important in the context of children’s rights, as children are typically considered to represent the conceptual link between present and future generations. Further, Viet Nam constitutionally recognises responsibilities relating to climate change.⁶⁹ While Cambodia does not expressly recognise a constitutional right to a healthy environment, it does constitutionally recognise children’s rights,⁷⁰ including those stipulated in the CRC.⁷¹ This is relevant given the growing appreciation that the CRC offers a strong basis to reinforce approaches to children’s environment-related rights.⁷²

All of the Review Countries are parties to the CRC

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

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

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

⁶⁵ See Analysis Matrices from page 47 of this Paper.

⁶⁶ Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Right to a healthy environment: good practices*, 43rd sess, Agenda item 3, UN Doc A/HRC/43/53 (24 February – 20 March 2020) [10].

⁶⁷ See Analysis Matrices from page 47 of this Paper.

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

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

⁷⁰ *Constitution of the Kingdom of Cambodia* art 31(1) states: “The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women’s rights and children’s rights.”

⁷¹ *Ibid* art 48(1).

⁷² See, Thoko Kaime, ‘Children’s Rights and the Environment’ in Kilkelly, Ursula and Liefwaard, Ton (eds) *International Human Rights of Children* (Springer, 2019) 563. See also para 2.3 and Figure 1 of this Paper.

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

⁷⁴ Opened for signature 19 December 2011, UNGA 66th sess, Agenda Item 64, UN Doc No. A/RES/66/138 (entered into force 14 April 2014). Mongolia ratified in 2015.

ASEAN Review Countries have adopted the ASEAN Human Rights Declaration

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

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

- 3.6 Indonesia, Mongolia and Viet Nam expressly recognise a right to a healthy environment in their national legislation.⁷⁹ Of these countries, it is only Viet Nam that creates an express connection between children's rights and environmental protection, by requiring environmental protection to be in harmony with the protection of children's rights.⁸⁰
- 3.7 Where the right to a healthy environment is expressed as a right for all citizens at a constitutional or legislative level without any child-specific references, the effect of such expression should be to protect the right to a healthy environment in respect of children. The risk however is that child-specific issues might not be adequately considered.

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

- 3.8 The Review Countries, with the possible exception of Cambodia, have legislation or policy in place that directly or indirectly addresses, to a greater or lesser extent, most of the substantive elements of the right of the child to a healthy environment. Figure 4 above displays a gap analysis drawn from the Analysis Matrices and demonstrates an assessment of the law and policy of Review Countries against the substantive elements of the right of the child to a healthy environment.
- 3.9 Cambodia had more gaps in Figure 4 than other Review Countries, with no law or policy responding to more than half of the categories that indicate substantive elements of the right of the child to a healthy environment.⁸¹ None of the Review Countries expressed a clear legal position on the responsibility of businesses to respect children's right to a healthy environment. Further, only Indonesia and Viet Nam include references to children in their NDCs under the UNFCCC.⁸² It is notable that in each Review Country there were a variety of legal instruments (typically aimed at child protection, human rights or environmental

⁷⁵ *ASEAN Human Rights Declaration 2012* art 28(f).

⁷⁶ *Ibid* art 28(e).

⁷⁷ *Ibid* art 35.

⁷⁸ *Ibid* art 36.

⁷⁹ *Law No.32 of 2009 on the Protection and Management of the Environment* (Indonesia) art 65(1); *Law No.39 of 1999 on Human Rights* (Indonesia) art 9(3); *Environmental Protection Law 1995* (Mongolia) arts 1, 4; *Law on Environmental Protection No.55/2014* (Viet Nam) art 4. See Analysis Matrices from page 47 of this Paper for a full break down. See Human Rights Council (n 66) annex V for further information on other countries in the Region.

⁸⁰ *Law on Environmental Protection No.55/2014* (Viet Nam) art 4(2) states: "Environmental protection must harmonize with the economic growth, social security, assurance about the children's right, promotion of gender equality, development and conservation of biodiversity, response to climate changes, in order to ensure the human right to live in a pure environment."

⁸¹ This observation is of course subject to the limitations of this study, as outlined at paras 1.7 – 1.8 of this Paper.

⁸² See Christina Kwauk, Jessica Cooke, Elisa Hara and Joni Pegram, *Girls' education in climate strategies – Opportunities for improved policy and enhanced action in Nationally Determined Contributions* (The Brookings Institute Global Economy & Development Working Paper 133, December 2019).

matters) that addressed different substantive elements of children's right to a healthy environment, rather than a singular unified source of law.⁸³

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

- (a) Fiji expressly considers children in the implementation of its NAP under the UNFCCC and adopts a gender and human rights based approach to climate change adaptation planning,⁸⁴ with relatively progressive references to girls.⁸⁵ Further, its *National Disaster Risk Reduction Policy 2018–2030* is guided by a human rights and gender-based approach that recognises children and youth as agents of change who should be given the space and modalities to contribute to disaster risk reduction.⁸⁶
- (b) Indonesia expressly refers to the interests of current and future generations in its *Prevention and Eradication of Forest Destruction Law*⁸⁷ as well as the older *Environmental Protection and Management Law*.⁸⁸
- (c) Viet Nam stipulates in its *Law on Environmental Protection 2014*⁸⁹ that environmental protection must harmonise with a number of economic, social and environmental issues, including the protection of the rights of the child.

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

3.11 Despite progress in recognising children's right to a healthy environment in national legal instruments, the research conducted for this Paper⁹⁰ indicates that the reality on the ground is one of inconsistent implementation and enforcement across all of the Review Countries. Constraints in human, technical and financial resources, as well as a lack of adequate capacity at a policymaking or implementation level, are reported in all Review Countries as an impediment to effective implementation of existing laws that directly or indirectly protect children's right to a healthy environment.

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

- (a) **Gaps between national environmental law and local implementation.** In Indonesia, reports indicate that such gaps may result from a decentralised system of governance, where many provinces relax or bypass national standards.⁹¹
- (b) **Unpredictable and insufficient enforcement and monitoring of national environmental laws.** In his mission to Mongolia, the former UNSR HRE documented repeated failures of effective implementation of environmental laws,⁹²

⁸³ See Analysis Matrices from page 47 of this Paper.

⁸⁴ Government of the Republic of Fiji, *Republic of Fiji National Adaptation Plan: A pathway towards climate resilience* (2018) 38.

⁸⁵ Kwauk, Cooke, Hara and Pegram (n 82) 16.

⁸⁶ Government of the Republic of Fiji, *National Disaster Risk Reduction Policy 2018–2030*, ss 6.2, 6.3.

⁸⁷ *The Prevention and Eradication of Forest Destruction Law No 18 of 2013* (Indonesia) recitals.

⁸⁸ *Environmental Protection and Management Law No 32/2009* (Indonesia) art 1(3), 3(f).

⁸⁹ *Law on Environmental Protection Law No 55 of 2014/QH13* (Viet Nam) art 4(2).

⁹⁰ See para 1.6 of this Paper for further details.

⁹¹ World Bank, *World Bank and the Environment in Indonesia* (Brief, 1 August 2014)

<<https://www.worldbank.org/en/country/indonesia/brief/world-bank-and-environment-in-indonesia>>.

⁹² John Knox, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his mission to Mongolia*, HRC, 37th sess, UN Doc. A/HRC/37/58/Add.2 (2 May 2018) 7 [28].

a lack of enforcement for illegal dumping of coal ash and untreated sewage,⁹³ and frequent duplication of data across environmental impact assessments without due consideration of specific geographical factors, despite progressive environmental impact assessment regulations.⁹⁴

- (c) Missing subsidiary legislation to enable and implement existing legal frameworks, as reported by the UNSR HRE in Mongolia.⁹⁵
 - (d) Inadequate protection of individuals and organisations that act to promote or protect children's right to a healthy environment. The former UN Special Rapporteur on the Situation of Human Rights Defenders (UNSR HRD) recently expressed concerns around the protection of human rights defenders in Mongolia, including environmentalists and child rights defenders.⁹⁶ Similar concerns have been reported in relation to the protection of environmental activists in Cambodia,⁹⁷ Indonesia⁹⁸ and Viet Nam.⁹⁹
- 3.13 To meet their duty to respect, protect and fulfil children's right to a healthy environment, countries must be able to enforce their existing laws that directly or indirectly protect that right. Many powerful rights that have been enacted in law and policy by the Review Countries are being lost at the implementation level through low levels of monitoring or enforcement.

Access to justice and effective remedies

- 3.14 This study has not considered children's practical access to justice nor the effectiveness of any remedies for a breach of their right to a healthy environment in any of the Review Countries. This topic is therefore proposed as a priority issue for further consideration.
- 3.15 In some Review Countries there are notable examples of laws that afford individuals rights of access to justice, rights to report a breach of their rights to specialised national institutions or a right to sue for a breach of their environmental rights. For example:
- (a) In Fiji, the Human Rights and Anti-Discrimination Commission has the power to invite and receive representations from any member of the public on any matter affecting human rights.¹⁰⁰ This mandate appears broad enough to include matters relating to children's rights, including children's right to a healthy environment.
 - (b) In Indonesia, every person is afforded a right of access to justice to specifically fulfil their right to a healthy environment, as well as the right to report harm from environmental pollution or damage.¹⁰¹ The Supreme Court of Indonesia also

⁹³ Ibid.

⁹⁴ Ibid 7 [29].

⁹⁵ Ibid. For example, the *Law on Water Pollution Fees* established fees for discharging wastewater in 2012, but the requisite subsidiary legislation to enable this mechanism had not been enacted as at mid-2017.

⁹⁶ Michel Forst, UN Special Rapporteur on the Situation of Human Rights Defenders, 'Mongolia: UN expert warns against setbacks in rule of law and shrinking space for civil society' (13 May 2019), *United Nations Human Rights Office of the High Commissioner*, <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24604&LangID=E>>.

⁹⁷ See, eg, Human Rights Watch, *Cambodia: Environmental Activists Harassed* (20 March 2020) <<https://www.hrw.org/news/2020/03/20/cambodia-environmental-activists-harassed>>.

⁹⁸ See, eg, Human Rights Watch, *Indonesia: Investigate Environmental Lawyer's Death* (10 October 2019) <<https://www.hrw.org/news/2019/10/10/indonesia-investigate-environmental-lawyers-death>>.

⁹⁹ See, eg, BBC News, *Vietnamese blogger jailed for environmental reports* (28 November 2017) <<https://www.bbc.com/news/world-asia-42153142>>; Human Rights Watch, *Vietnam: 6 Activists Headed to Prison* (14 March 2019) <<https://www.hrw.org/news/2019/03/14/vietnam-6-activists-headed-prison>>.

¹⁰⁰ *Human Rights and Anti-Discrimination Commission Act 2009* (Fiji) s 12(b).

¹⁰¹ *Environmental Protection and Management Law No. 32/2009* (Indonesia) art 65(2), 65(5).

requires all environmental cases to be heard by judges with specialised knowledge of environmental matters.¹⁰²

- (c) In Mongolia, child protection legislation affords every child the right to directly complain to national child protection institutions where there is an alleged violation of their rights.¹⁰³ In environmental protection legislation, individuals also have standing to sue for compensation for environmental damage, e.g. where a breach of forest protection legislation causes damage to their health or property.¹⁰⁴

3.16 Notably, children often do not possess legal standing to bring a claim before national courts.¹⁰⁵ As such, where national law establishes legal standing for individuals to sue for a breach of their environmental rights, this is unlikely to extend to children in their personal capacity.

Priority issues for further consideration

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

- (a) Whether children's right to a healthy environment has been recognised in national law. Where States have already recognised a right to a healthy environment, whether that right adequately recognises child-specific concerns.
- (b) Whether States should conduct audits of national law that currently address substantive and procedural elements of children's right to a healthy environment, to assess how comprehensively the right is protected, implemented and where gaps remain.
- (c) What remedies are available to children at a national level if their right to a healthy environment is breached and whether such remedies are effective.
- (d) Whether children's right to a healthy environment should be recognised at a regional level.
- (e) Ratification of the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*¹⁰⁶ for States that are not yet parties.

¹⁰² Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Right to a healthy environment: good practices*, 43rd sess, Agenda item 3, UN Doc A/HRC/43/53 (24 February – 20 March 2020) [36].

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

¹⁰⁴ *Law on Forests 2012* (Mongolia) art 20.1.1.

¹⁰⁵ See Christine Bakker, 'Climate Change and Children's Rights' in Jonathan Todres and Shani M King (eds), *The Oxford Handbook of Children's Rights Law* (Oxford University Press, 2020) ch 22 [4.3]; Committee on the Rights of the Child (n 42) 1; Human Rights Council, *Report of the United Nations High Commission for Human Rights: Access to justice for children*, 25th sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013).

¹⁰⁶ Opened for signature 19 December 2011, UNGA 66th sess, Agenda Item 64, UN Doc No. A/RES/66/138 (entered into force 14 April 2014). Mongolia ratified in 2015.



Part II

**Children's
education,
engagement and
participation in
environmental
affairs**

Children’s education, engagement and participation in environmental affairs

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

- 4.1 As outlined in the *Framework Principles on Human Rights and the Environment*,¹⁰⁷ the obligations of States in relation to the environment include duties relating to education and public awareness, freedom of expression, association and peaceful assembly, public access to environmental information, and participation in environmental decision-making.¹⁰⁸ The former UNSR HRE details how fulfilling these obligations ensures that children “*have agency to influence environmental policy and protect themselves from environmental harm*”.¹⁰⁹

All of the Review Countries are parties to the Paris Agreement

- 4.2 All of the Review Countries are parties to the *Paris Agreement*,¹¹⁰ such that they have accepted obligations to cooperate in taking measures to enhance climate change education, training, public awareness, public participation and public access to information.¹¹¹ Consistent with their commitment to the *Paris Agreement*, States can be expected to take steps to progress such measures as they relate to children’s right to a healthy environment.
- 4.3 While these obligations under the *Paris Agreement* are not specific to children, they are applicable to children. The preamble to the *Paris Agreement* requires State parties to “*respect, promote and consider their respective obligations*” in relation to the rights of “*children*” when taking action to address climate change, which applies to the interpretation of the operative provisions of the *Paris Agreement*.¹¹² Further, while climate change is not indicative of the whole host of environmental factors that impact children’s rights, climate change is well recognised as a threat to the full enjoyment of human rights,¹¹³ including children’s rights.

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

- 4.4 ASEAN member States Cambodia, Indonesia and Viet Nam recently participated in a dialogue on General Comments of the Committee on the Rights of the Child, through the ASEAN Intergovernmental Commission on Human Rights (AICHR).¹¹⁴ The dialogue sought to share best practices, identify regional and international trends in advancing the rights of the child, and particularly focused on General Comment 12 on the right of the child to be heard¹¹⁵ and General Comment 14 on the right of the child to have their best interests taken

¹⁰⁷ Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 37th sess, UN Doc A/HRC/37/59 (24 January 2018) annex.

¹⁰⁸ *Ibid* principles 5-10.

¹⁰⁹ UNSR HRE Report (n 3) [39].

¹¹⁰ *Paris Agreement*, opened for signature 12 December 2015 (entered into force 4 November 2016).

¹¹¹ *Ibid* art 12.

¹¹² The preamble provides context for the interpretation of the operative provisions of the *Paris Agreement: Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 31(2).

¹¹³ See United Nations General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 74th sess, Item 72(b) preliminary list, UN Doc A/74/161 (15 July 2019).

¹¹⁴ ASEAN Intergovernmental Commission on Human Rights, ‘AICHR Holds Dialogue to Strengthen Awareness on the Rights of The Child’ (26 December 2019), <<https://aichr.org/news/aichr-holds-dialogue-to-strengthen-awareness-on-the-rights-of-the-child/>>.

¹¹⁵ Committee on the Rights of the Child, *General Comment No. 12 (2009) The right of the child to be heard*, 51st sess, UN Doc CRC/C/GC/12 (20 July 2009).

as a primary consideration.¹¹⁶ Recommendations arising from the dialogue will provide inputs into national and regional policy, and include a recommendation to reinforce efforts to educate children about their rights.

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

- 4.5 All of the Review Countries are parties to the CRC,¹¹⁷ which recognises that children who are capable of forming their own views should have the right to express their views freely on all matters that affect them, and that such views should be considered.¹¹⁸
- 4.6 Examples were found in all Review Countries of children and youth expressing their views on environmental affairs via organisations, events, and initiatives that were led by or focussed on the active engagement and participation of children and youth. There were particularly clear and accessible examples of children and youth expressing their views on the subject of climate change. Examples include:
- (a) In Cambodia, the student and rural youth organisation Cambodian Youth Network¹¹⁹ works to “*increase youth participation and civic engagement in Cambodia to promote children’s rights, natural resource and environmental rights, and human rights*”¹²⁰ and has been active in calling for national environmental reforms.¹²¹
 - (b) In Fiji, Project Survival Pacific is a youth-led movement that lobbies, raises awareness, and educates communities on climate change and sustainable development.¹²² The Fiji YouthSpeak Forum 2018 brought together youth leaders to discuss and determine action aligned with SDGs 13 and 14 to fight climate change and to sustain life below water.¹²³ Individual activists 12-year-old Timoci Naulusala and 10-year-old Shalvi Shakshi advocated for urgent climate action at the UNFCCC COP23.¹²⁴ Naulusala subsequently advocated for the same at the inaugural UN Youth Climate Summit, in 2019.¹²⁵
 - (c) In Indonesia, children and youth protested in the student-led Global Climate Strike in Jakarta, in advance of the UN Climate Action Summit 2019.¹²⁶ Nominated youth

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

¹¹⁷ See para 1.3 above.

¹¹⁸ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12(1). See also, UNSR HRE Report (n 3) [47] – [50].

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

¹²⁰ Raksmei Hong, *Cambodian Youth Network works on civic engagement in society* (The Phnom Penh Post, 2 December 2019) <<https://www.phnompenhpost.com/lifestyle-around-ngos/cambodian-youth-network-works-civic-engagement-society>>.

¹²¹ See eg, Pech Sotheary, *Youths call for more environmental reforms* (Khmer Times, 4 June 2018)

<<https://www.khmertimeskh.com/496722/youths-call-for-more-environmental-reforms/>>.

¹²² Climate Action Network International, *Project Survival Pacific* <<http://www.climatenetwork.org/profile/member/project-survival-pacific>>.

¹²³ See, Fiji YouthSpeak Forum 2018, *Empowering Youth: From decisions to actions focusing on SDG13 & SDG14* <https://www.unifiji.ac.fj/wp-content/uploads/2018/04/Fiji-Youth-Speak-Forum-2018-Event-Flyer_West.pdf>; Vilimaina Naqeleuvuki, *Youth speak on climate change* (Fiji Times, 28 April 2018) <<https://www.fijitimes.com/youth-speak-on-climate-change/>>.

¹²⁴ COP23 Fiji, *Timoci & Shalvi – Fiji’s youngest climate stars* <<https://cop23.com.fj/timoci-and-shalvi-fijis-youngest-climate-stars/>>; Straits Times, *Why a 12-year-old Fiji boy is the new face of UN climate change* (16 November 2017)

<<https://www.straitstimes.com/world/europe/world-leaders-plead-for-climate-action-at-un-forum-but-its-a-12-year-old-boy-who-drives>>.

¹²⁵ The Fijian Government, *Youth climate advocate calls on world leaders to act against climate change* (22 September 2019) <<https://www.fiji.gov.fj/Media-Centre/News/YOUNG-CLIMATE-ADVOCATE-CALLS-ON-WORLD-LEADERS-TO-A>>.

¹²⁶ A Muh. Ibnu Aqil, *‘We don’t have a spare planet’, students demand action as Indonesia joins global climate strike* (Jakarta Post, 21 September 2019) <<https://www.thejakartapost.com/news/2019/09/20/we-dont-have-a-spare-planet-students-demand-action-as-indonesia-joins-global-climate-strike.html>>; Phillip Gass, *Indonesians are demanding climate action – How can the government answer their calls?* (International Institute for Sustainable Development, 17 October 2019) <<https://www.iisd.org/blog/indonesians-demanding-climate-action>>.

leaders participated in and advocated for climate action in the UN Youth Climate Summit in 2019.¹²⁷ The student-founded organisation KOPHI organises events, campaigns and conservation activities aimed at engaging Indonesian children and youth in environmental issues and sustainable development.¹²⁸

- (d) In Mongolia, 14-year-old Nomundari is a climate activist who has advocated for action against air pollution and climate change at the UN and has coordinated climate change demonstrations in Mongolia.¹²⁹ Primary school children at ISU Ecovengers work with community advocates and local and international organisations on issues arising in the local and global environment.¹³⁰
- (e) In Viet Nam, children, youth and parents participated in global climate strikes from Ho Chi Minh City, which was initiated by Vietnamese youth Huyen Phan.¹³¹ In 2018, youth groups organised flash mobs to demand action on climate change.¹³² Students and youth at the Viet Nam Climate Leadership Camp organised by 350.org undertook training on how to design strategic climate change campaigns, mobilise resources, and conduct communications and advocacy.¹³³

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

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

4.8 While examples of children and youth expressing their views on environmental affairs were found across all Review Countries, the mission of the former UNSR HRD in Mongolia highlights that children and youth still experience being dismissed or trivialised by adults and authorities when trying to address matters that affect their rights – including the quality of their education or issues relating to climate change.¹³⁴ For example, the former UNSR HRD reports that children in Mongolia were unable to organise a ‘Fridays for Future’ demonstration to campaign for human rights and against climate change, as the Governor of Ulaanbaatar city was not forthcoming with the detail needed to approve a demonstration under local legislation.¹³⁵

¹²⁷ UNESCO, *Indonesian youth activists press for action on climate emergency* (28 September 2019)

<<https://en.unesco.org/news/indonesian-youth-activists-press-action-climate-emergency>>.

¹²⁸ See generally, Koalisi Pemuda Hijau Indonesia (KOPHI) <<http://kophi.or.id/>>.

¹²⁹ World Vision, *Tackling air pollution and climate change in Mongolia* (12 July 2019) <<https://www.wvi.org/stories/it-takes-world/tackling-air-pollution-and-climate-change-mongolia>>; T Baljmaa, *SDG advocates in Mongolia recognized* (Montsame, 23 December 2019) <<https://www.montsame.mn/en/read/210580>>.

¹³⁰ See generally, ISU Ecovengers, *Who are we? What do we do?* <<http://isuecovengers.weebly.com/>>.

¹³¹ 350.org East Asia, *Vietnamese youth demand urgent climate action* (27 September 2019) <<https://world.350.org/east-asia/vietnamese-youth-demand-urgent-climate-action/>>.

¹³² Colin Drury, *Rise for Climate: Protesters take to streets across the planet to demand action on environment* (Independent, 8 September 2018) <<https://www.independent.co.uk/news/uk/home-news/rise-for-climate-protests-environment-action-sydney-vietnam-durham-uk-a8528786.html>>.

¹³³ 350.org, *Vietnamese youth who rise for climate* (23 August 2018) <<https://350.org/vietnamese-youths-who-rise-for-climate/>>.

¹³⁴ Michel Forst (UN Special Rapporteur on the Situation of Human Rights Defenders), *Visit to Mongolia 30 April – 13 May 2019: End of mission statement* (UN OHCHR)

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24603&LangID=E>>.

¹³⁵ *Ibid.*

Practices that promote child and youth engagement and participation in environmental affairs are found in all Review Countries

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

- (a) In Cambodia, the Impact Hub in Phnom Penh aims to empower youth and start-ups to solve social and environmental problems through entrepreneurship and leadership.¹³⁶ The Impact Hub's programmes, including Youth Eco Labs and SmartSpark, support young people with innovative ideas to tackle issues relating to the environment and sustainable development.¹³⁷
- (b) In Indonesia, the eco-schools project run by the Indonesia Green Action Forum teaches children and adolescents in the early stages of education about current environmental issues in Indonesia and strategies to combat those issues.¹³⁸ An indigenous school network, coordinated by the Indigenous People's Alliance of the Archipelago,¹³⁹ facilitates afternoon learning clubs on cultural traditions, including indigenous conservation practices.

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

4.10 The Committee on the Rights of the Child identifies the right of children to be heard and taken seriously as one of the fundamental values of the CRC.¹⁴⁰ The UNSR HRE also outlines the importance of children contributing their perspectives and experiences in respect of environmental harm.¹⁴¹

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

- (a) In Fiji, youth leaders appointed to the National Youth Council of Fiji have partnered with the Government of Fiji to participate in policymaking processes for children and youth, address youth development issues, and to build the capacity of all youth services in Fiji.¹⁴²
- (b) In Indonesia, every person is entitled to participate in environmental decisions to fulfil their right to a healthy environment.¹⁴³ Communities also possess the right to actively participate in environmental protection and management, including

¹³⁶ See generally, Impact Hub Phnom Penh, *About Us* <<https://phnompenh.impacthub.net/about-us/>>.

¹³⁷ See Impact Hub Phnom Penh, *SmartSpark (Social Welfare)* <<https://phnompenh.impacthub.net/smartspark/>>.

¹³⁸ UNESCO, *Indonesian eco-schools to educate the youth on environmental issues* <<https://en.unesco.org/greencitizens/stories/indonesian-eco-schools-educate-youth-environmental-issues>>.

¹³⁹ Grace Susetyo, *Indonesia's indigenous schools initiate participatory conservation* (Landscape News, 22 May 2018) <<https://news.globallandscapesforum.org/27518/indonesias-indigenous-schools-initiate-participatory-conservation/>>; see generally, AMAN (Aliansi Masyarakat Adat Nusantara) <<https://www.aman.or.id/>>.

¹⁴⁰ Committee on the Rights of the Child, *General Comment No.12 (2009): The right of the child to be heard*, 51st sess, Geneva, 25 May–12 June 2009, UN Doc CRC/C/GC/12 (20 July 2009).

¹⁴¹ UNSR HRE Report (n 3).

¹⁴² See, eg, The Fijian Government, *National Youth Council of Fiji applauded* (24 January 2016) <<https://www.fiji.gov.fj/Media-Centre/News/NATIONAL-YOUTH-COUNCIL-OF-FIJI-APPLAUDED>>; Vilisi Nawaqatabi, *New members of Fiji Youth Council announced* (Fiji Village, 6 December 2019) <<https://fijivillage.com/news/New-members-of-Fiji-Youth-Council-announced--s592kr/>>.

¹⁴³ *Environmental Protection and Management Law No 32/2009* (Indonesia) art 65(2).

through making suggestions, complaints or reports to relevant decision-makers.¹⁴⁴ Notably these rights do not appear to consider child-specific concerns.

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

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

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

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

- 4.14 The UNSR HRD has expressed concerns around the protection of human rights defenders in Mongolia, including environmentalists and child rights defenders who have been subject to intimidation, discrimination, and stigmatisation, with some dying in circumstances that are still to be properly investigated.¹⁴⁸ Similar concerns have been reported in relation to the protection of environmental activists in Cambodia,¹⁴⁹ Indonesia¹⁵⁰ and Viet Nam.¹⁵¹

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

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

- (a) In Fiji, thematic issues of climate change and the environment are incorporated into the national curriculum¹⁵² by way of a national climate change policy,¹⁵³ which

¹⁴⁴ Ibid art 70.

¹⁴⁵ *Law on Children*, Law No. 102/2016/QH13 (Vietnam) art 74.

¹⁴⁶ *Decision 1235/QĐ-TTg*, 3 November 2015. The Decision, in approving the programme to promote child participation during 2016-2020, sets the following targets: (i) all laws and policies related to children at central level must involve the participation of children, and (ii) 90% of decisions made by schools must ensure children are consulted and 90% of decisions made by communities should involve child consultations.

¹⁴⁷ Socialist Republic of Viet Nam Ministry of Labour – Invalids and Social Affairs, *Children's Forum - activities for children's representatives to express children's opinions and aspirations* (20 June 2019) <<http://old.molisa.gov.vn/vi/Pages/chitiettin.aspx?IDNews=29705>>.

¹⁴⁸ Michel Forst (UN Special Rapporteur on the Situation of Human Rights Defenders), *Mongolia: UN expert warns against setbacks in rule of law and shrinking space for civil society* (UN OHCHR, 13 May 2019), <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24604&LangID=E>>.

¹⁴⁹ See, eg, Human Rights Watch, *Cambodia: Environmental activists harassed* (20 March 2020) <<https://www.hrw.org/news/2020/03/20/cambodia-environmental-activists-harassed>>.

¹⁵⁰ See, eg, Human Rights Watch, *Indonesia: Investigate environmental lawyer's death* (10 October 2019) <<https://www.hrw.org/news/2019/10/10/indonesia-investigate-environmental-lawyers-death>>.

¹⁵¹ See, eg, BBC News, *Vietnamese blogger jailed for environmental reports* (28 November 2017) <<https://www.bbc.com/news/world-asia-42153142>>; Human Rights Watch, *Vietnam: 6 activists headed to prison* (14 March 2019) <<https://www.hrw.org/news/2019/03/14/vietnam-6-activists-headed-prison>>.

¹⁵² Republic of Fiji Ministry of Economy, *Transforming Fiji: 5-Year & 20-Year National Development Plan* (November 2017) 35.

¹⁵³ Republic of Fiji *National Climate Change Policy 2018-2030*.

recognises that “*Fiji’s education system must deliver the tools required for an intergenerational response to climate change*”,¹⁵⁴ and to ensure that national education supports long term capacity building and employment transitions to a “*climate ready workforce*”.¹⁵⁵

- (b) Mongolia’s environmental protection legislation recognises a duty to ensure that national educational systems include environmental protection and ecological training¹⁵⁶ and that environmental protection courses and skills are targeted at children at pre-school and secondary school institutions.¹⁵⁷ In its national sustainable development plan Mongolia also aims to educate all citizens on coping with climate change.¹⁵⁸
 - (c) In Viet Nam, environmental protection legislation requires the national curriculum to convey environmental content.¹⁵⁹ Through its sustainable development strategy,¹⁶⁰ Viet Nam aims to accelerate public awareness of sustainable development and the protection of the environment by integrating these thematic issues into the national curriculum.¹⁶¹ Students are also expected to participate in “*environmental protection activities suitable to their age groups, health and ability*”.¹⁶² In May 2019, the Viet Nam Ministry of Natural Resources and Environment and Ministry of Education and Training signed a joint programme to improve environmental protection education, training, and awareness raising.¹⁶³
- 4.16 While Cambodia does not appear to recognise children’s right to an environmental education in legislation or policy, its government ministries are collaborating to promote environmental education. For example, in June 2018 the Ministry of Environment requested that the Ministry of Education incorporate environmental issues into the national school curriculum.¹⁶⁴ It is unclear if these requests were implemented.
- 4.17 Notably, child and youth delegates from across the Region called for greater integration of environmental education in national curriculums at the second CERI expert consultation.¹⁶⁵

¹⁵⁴ Ibid, 17 fn 1.

¹⁵⁵ Ibid, 72.

¹⁵⁶ *Environmental Protection Law 1995* (Mongolia) art 36(1).

¹⁵⁷ Ibid, art 36(2)(1).

¹⁵⁸ State Great Hural of Mongolia, *Mongolia Sustainable Development Vision 2030* (2016) <https://www.unpage.org/files/public/20160205_mongolia_sdv_2030.pdf> 30, 2.3.2, Objective 1.

¹⁵⁹ *Law on Environmental Protection 2014* (Viet Nam) art 155(1).

¹⁶⁰ *Decision No. 432/QD-TTg* (12 April 2012) (Viet Nam); adopting *Viet Nam Sustainable Development Strategy for 2011-2020*.

¹⁶¹ Ibid [II.3].

¹⁶² *Law on Education No. 38/2005/QH11* (Viet Nam) art 85(3).

¹⁶³ Viet Nam Environment Administration, *Signing a coordinated program on environmental protection between MoNRE and MoET in the period of 2019 – 2025* (12 May 2019)

<<https://web.archive.org/web/20191022152722/http://vea.gov.vn/en/news/news/Pages/Signing-a-coordinated-program-on-environmental-protection-between-MONRE-and-MoET-in-the-period-of-2019-2025.aspx>>.

¹⁶⁴ Pech Sotheary, ‘Push for environment education’ *Khmer Times* (online, 6 June 2018)

<<https://www.khmertimeskh.com/497326/push-for-environment-education/>>.

¹⁶⁵ See Global Initiative on Advancing Children’s Right to a Healthy Environment, *Outcome Report for the Regional Expert Consultation for East Asia and the Pacific, Bogor, Indonesia: 22-23 October 2019* <<https://www.childenvironment.org/reports>> 19.

All of the Review Countries recognise public rights of access to environmental information yet practical accessibility for children remains a challenge

- 4.18 Rights of public access to environmental information are recognised to some degree across each of the Review Countries.¹⁶⁶ For example:
- (a) In Fiji, there are significant constitutional and legislative avenues to access environmental information.¹⁶⁷ It is unclear, however, whether children can easily access such information in practice. In the context of climate change, Fiji recognises that barriers to accessing information remain, due to insufficient availability of relevant data and the need to improve how information is communicated to local-level stakeholders.¹⁶⁸ One approach taken by Fiji has been to collaborate with other Pacific island nations to create a network of national environmental data portals, which is used for environmental monitoring, evaluation, forecasting and reporting.¹⁶⁹
 - (b) In Mongolia, the Ministry of Environment and Tourism hosts an extensive website which provides public access to national environmental data, including databases on forest management, air pollution, special protected areas and environmental laws.¹⁷⁰ However, it is unclear whether the data on this website is frequently updated to keep stakeholders informed of recent developments.
 - (c) In Viet Nam, the Ministry of Natural Resources and the Environment is responsible for collecting and maintaining environmental information in a national database,¹⁷¹ which must be adequately updated to meet public interest and environmental protection needs.¹⁷² Certain environmental impact assessments, details of emission sources, treatment of waste, and areas suffering from particularly serious pollution, environmental degradation or at risk of environmental incidents must be published in a publicly accessible way.¹⁷³
- 4.19 There remain challenges to the practical accessibility of updated environmental information, especially for children. The recent launch of RightsApp¹⁷⁴ in Viet Nam, a mobile app that allows users to search international human rights treaties and declarations by topic in Vietnamese,¹⁷⁵ may offer a helpful precedent to facilitate access to environmental information and law, as well as other elements of children's right to a healthy environment.

¹⁶⁶ See Figure 4 above and Analysis Matrices from page 47 of this Paper.

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

¹⁶⁸ Government of the Republic of Fiji, Republic of Fiji National Adaptation Plan: A pathway towards climate resilience (2018) 29–30.

¹⁶⁹ SPREP, Inform Data Portals <<https://www.sprep.org/inform/data-portals>>.

¹⁷⁰ Government of Mongolia, Ministry of Environment and Tourism <<https://www.mne.mn>>.

¹⁷¹ Law on Environmental Protection 2014, No. 55/2014/QH13 (Viet Nam) art 129(1).

¹⁷² Ibid art 128(2).

¹⁷³ Ibid art 131.

¹⁷⁴ RightsApp is the product of a partnership between the Australian Human Rights Commission, legal research company LexisNexis, and the Ho Chi Minh Academy of Politics.

¹⁷⁵ Australian Human Rights Commission, Mobile human rights app now in Vietnamese (27 August 2019), <<https://www.humanrights.gov.au/about/news/mobile-human-rights-app-now-vietnamese>>.

Priority issues for further consideration

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

- (a) Whether there is sufficient public awareness, understanding and protection of human and children's rights defenders and environmentalists.
- (b) The role of children and youth in disseminating environmental education and best practice amongst their communities.
- (c) Whether the content of national environmental education curriculums is sufficient to educate children on their environmental rights.
- (d) The use of social media platforms or online apps to facilitate environmental education or access to environmental information, e.g. RightsApp.¹⁷⁶
- (e) The extent to which children's views and participation in decision-making on environmental matters are considered.
- (f) Identifying which ministries are mandated to collect, update and disseminate environmental information.
- (g) Whether national human rights institutions can be enlisted to promote awareness of children's right to a healthy environment.

¹⁷⁶ See para 4.19 above.



Part III

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

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

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

- 5.1 It is well recognised that businesses have a responsibility to respect children's rights,¹⁷⁷ as well as human rights in general.¹⁷⁸ Children's experiences differ to those of adults when their rights are adversely affected by the operations and activities of business enterprises.¹⁷⁹ For example, children are often politically voiceless, it is typically difficult for children to secure remedies through the courts or other mechanisms, and childhood is a unique state of development such that a breach of children's rights can have enduring lifelong consequences.¹⁸⁰ Therefore, any consideration of the adverse impact of business activities on children's rights requires an appreciation of child-specific concerns. The *Children's Rights and Business Principles*¹⁸¹ provide a framework for understanding and addressing the impact of business on the rights and well-being of children,¹⁸² and expressly recognise that all businesses should respect and support children's rights in relation to the environment.¹⁸³

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

- 5.2 In light of the growing recognition of the impact that business activities can have on human rights, the international community is developing a treaty to regulate this activity. In 2014, the Human Rights Council established an open-ended intergovernmental working group (**OEIGWG**) on transnational corporations and other business enterprises, with a mandate to "elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises".¹⁸⁴
- 5.3 The latest OEIGWG session in 2019 involved substantive intergovernmental negotiations on a revised draft treaty.¹⁸⁵ The current draft protects and promotes children's right to a healthy environment through express recognition of the heightened risks of business-related human rights violations in relation to children,¹⁸⁶ and by defining "human rights violations or abuse" to include the violation of environmental rights by a State or business enterprise.¹⁸⁷ Of the Review Countries, only Indonesia participated in the recent revised draft treaty negotiations.¹⁸⁸

¹⁷⁷ See Committee on the Rights of the Child, *General Comment No.16 (2013) on State obligations regarding the impact of the business sector on children's rights*, UN Doc CRC/C/GC/16 (17 April 2013);UNSR HRE Report (n 3) [62].

¹⁷⁸ See United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework* (2011) <<https://www.unglobalcompact.org/library/2>>.

¹⁷⁹ Committee on the Rights of the Child, *General Comment No.16 (2013) on State obligations regarding the impact of the business sector on children's rights*, UN Doc CRC/C/GC/16 (17 April 2013) [I].

¹⁸⁰ Ibid.

¹⁸¹ *Children's Rights and Business Principles* (2012) <<https://www.unglobalcompact.org/library/63>>. These principles were developed by Save the Children, the United Nations Global Compact and UNICEF.

¹⁸² Ibid 2.

¹⁸³ Ibid Principle 7.

¹⁸⁴ Human Rights Council, *26/9 Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights*, 26th sess, Agenda Item 3, UN Doc A/HRC/RES/26/9 (14 July 2014).

¹⁸⁵ Human Rights Council, *Report on the fifth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 43rd sess, Agenda Item 3, UN Doc A/HRC/43/55 (9 January 2020).

¹⁸⁶ Open-ended Intergovernmental Working Group (**OEIGWG**), *Legally Binding Instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises* (OEIGWG Chairmanship Revised Draft 16 July 2019) preamble, arts 5(3)(b), 14(4).

¹⁸⁷ Ibid art 1(2).

¹⁸⁸ Ibid annex I.

ASEAN Review Countries are building recognition of the link between business sector activities and children's rights and the environment

- 5.4 ASEAN member States Cambodia, Indonesia and Viet Nam are building recognition of the links between the activities of the business sector and children's rights and the environment. Through the AICHR, ASEAN member States have participated in annual interregional dialogues in recent years, to share best practices and to take stock of progress on business and human rights, including children's rights and environmental concerns.¹⁸⁹ It is unclear whether issues specifically relating to children's right to a healthy environment were raised during these dialogues.

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

- 5.5 A NAP BHR is an "evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights".¹⁹⁰ The UNGPs¹⁹¹ are authoritative guidelines for countries and business enterprises to prevent, address and remedy adverse human rights impacts linked to business activity. The UN Working Group on Business and Human Rights has strongly encouraged all countries to develop, enact and update a NAP BHR to disseminate and implement the UNGPs.¹⁹²
- 5.6 A NAP BHR provides an opportunity for countries to reinforce their policy position on respecting, protecting and fulfilling children's right to a healthy environment, while providing the business sector with clear guidance on expectations where business activities have the potential to impact children's right to a healthy environment.
- 5.7 None of the Review Countries have published a formal NAP BHR, although Indonesia published a recommended NAP BHR in 2017. Only two Review Countries are in the process of developing a formal NAP BHR, as follows:
- (a) In Indonesia, the government established a focus group in 2019 to develop a formal NAP BHR.¹⁹³ In 2017, the National Commission on Human Rights (**Komnas HAM**) and civil society organisation Institute for Policy Research and Advocacy (**ELSAM**) launched a recommended NAP BHR,¹⁹⁴ making Indonesia the first country in the region to initiate a NAP BHR process via its national human rights institution.¹⁹⁵ This recommended NAP BHR was developed through extensive consultation with stakeholders across government, business and civil society, including children's rights groups. Notably, it highlights the special attention that should be paid to children and details the international and national legal basis for doing so. It is unclear how the recommended NAP BHR is informing

¹⁸⁹ See ASEAN, *ASEAN pushes forward on upholding human rights in economic pursuit* (13 June 2019) <<https://asean.org/asean-pushes-forward-upholding-human-rights-economic-pursuit/>>; ASEAN, *ASEAN promotes human rights-abiding business practices* (12 June 2018) <<https://asean.org/asean-promotes-human-rights-abiding-business-practices/>>.

¹⁹⁰ UN Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights* (2016) <https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf> i.

¹⁹¹ See United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework* (2011).

¹⁹² United Nations Human Rights Office of the High Commissioner, *State national action plans on Business and Human Rights* <<https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>>.

¹⁹³ National Action Plans on Business and Human Rights, *Indonesia* (May 2017) <<https://globalnaps.org/country/indonesia/>>.

¹⁹⁴ Komnas HAM and ELSAM, *National Action Plan on Business and Human Rights* (May 2017) <<https://globalnaps.org/wp-content/uploads/2017/11/nap-indonesia.pdf>>.

¹⁹⁵ Sekar Banjaran Aji, *Developing a National Action Plan on a polycentric governance: Case of Indonesia* (Cambridge Core Blog, 2 August 2019) <<https://www.cambridge.org/core/blog/2019/08/02/developing-a-national-action-plan-on-a-polycentric-governance-system-case-of-indonesia>>.

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

- (b) In Mongolia, a multi-stakeholder working group was established in 2019 to formulate a NAP BHR,¹⁹⁹ which is expected to be published by early 2021.²⁰⁰ It is unclear the extent to which that NAP BHR will address child-specific or environmental concerns.

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

- 5.8 The former UNSR HRE outlines that respecting the right of the child to be free from environmental harm requires businesses to comply with the UNGPs, *Children's Rights and Business Principles* and the recommendations of the Committee on the Rights of the Child in its General Comment 16.²⁰¹ We were unable to identify any clear reference to these standards in the binding law or policy of any of the Review Countries, as indicated in the gap analysis at Figure 4.
- 5.9 However, other measures and initiatives exist across the Review Countries to promote awareness of international standards addressing the risk of adverse children's rights impacts from business activity. For example, Indonesia's recommended NAP BHR references each of the international standards discussed at 5.8 above.
- 5.10 Further, IGO partnerships with the public and private sector in many of the Review Countries are raising awareness of these international standards. For example, in Mongolia, UNICEF has partnered with business platforms, NGOs and key industries to provide capacity building and technical assistance on implementing the *Children's Rights and Business Principles*. UNICEF has also provided technical inputs to develop a Model Community Development Agreement with the Mongolian Ministry of Mining, to ensure that children's rights are appropriately considered in mining developments.²⁰²

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

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

¹⁹⁶ United Nations Development Programme Asia and the Pacific, *Highlights from the Asia Session at the 2019 UN Forum on Business and Human Rights* (13 January 2020) <<https://www.asia-pacific.undp.org/content/rbap/en/home/presscenter/articles/2019/2019unBHRforumgeneva.html>>.

¹⁹⁷ Komnas HAM Regulation No. 1 of the year 2017 on Ratification of the National Plan of Action on Business and Human Rights (Indonesia) art 2.

¹⁹⁸ Ibid.

¹⁹⁹ Montsame Mongolian News Agency, *Views exchanged on collaboration for business and human rights* (8 April 2020) <<https://montsame.mn/en/read/221439>>.

²⁰⁰ National Action Plans on Business and Human Rights, *Mongolia* <<https://globalnaps.org/country/mongolia/>>.

²⁰¹ Committee on the Rights of the Child, *General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, UN Doc CRC/C/GC/16 (17 April 2013).

²⁰² UNICEF Mongolia, *Children's Rights and Business Principles (CRBP)* <<https://www.unicef.org/mongolia/child-rights-and-business-principles-crbp>>.

children's right to a healthy environment by ensuring protection from environmental harm. While a full assessment of these laws was beyond the scope of this study, clear examples are identified in Indonesia and Mongolia:

- (a) In Indonesia, under the *Environmental Protection and Management Law*, businesses are required to undertake an environmental risk analysis for any activity that may substantially impact the environment or human health and safety, and must also undertake periodical environmental audits.²⁰³ There is no express requirement to consider child-specific concerns in this legal regime.
- (b) In Mongolia, the *Law on Environmental Impact Assessments*²⁰⁴ and the *Environmental Protection Law*²⁰⁵ establish comprehensive regulations for the business sector to undertake environmental impact assessments to minimise and mitigate any adverse effects to human health and the environment. Public participation requirements mean that local communities affected by a proposed project must be consulted,²⁰⁶ although consideration of child-specific concerns are not expressly identified in this regime.

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

- 5.12 While core legal frameworks to regulate business and human rights such as NAP BHRs are being developed by some Review Countries, inconsistent implementation and enforcement of existing legal frameworks across the Review Countries undermines the regulation of business respect for children's right to a healthy environment.
- 5.13 For example, while Mongolia has enacted detailed environmental protection and environmental impact assessment laws that regulate business activities, the UNSR HRE reports repeated failures to implement, monitor and enforce these laws.²⁰⁷ Examples include: (i) unregulated water pollution from mining and incidences of untreated sewage being discharged into the Tuul River around Ulaanbaatar;²⁰⁸ (ii) environmental impact assessment reports submitted by project proponents being "*cut-and-pasted*"²⁰⁹ from other reports, such that factors specific to the project remained unconsidered; and, (iii) while Mongolia's legal framework requires business entities in the natural resource sector to undertake an environmental audit every two years, only one staff member from the Ministry of Environment and Tourism supervises the environmental audits and limited sanctions are enforced for non-compliance. Consequently, these audits frequently result from voluntary action by businesses and investor pressure, rather than the legal obligation.²¹⁰
- 5.14 As discussed at 2.19 above, the reasons for such inconsistency are complex. Relevant factors include:
 - (a) **Institutional and financial constraints**, including insufficient technical capacity at a policymaking and implementation level, as well as poor coordination between

²⁰³ *Environmental Protection and Management Law No.32/2009* (Indonesia) arts 47 – 49.

²⁰⁴ *Law on Environmental Impact Assessments 2012* (Mongolia).

²⁰⁵ *Environmental Protection Law 1995* (Mongolia).

²⁰⁶ Michael Aldrich and Chris Melville, *Revision of environmental laws in Mongolia and its impact on the mining sector* (Lexology, 8 October 2012) <<https://www.lexology.com/library/detail.aspx?q=06cbf257-305d-49ff-98ef-4154c8d0530b>>.

²⁰⁷ See John Knox, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his mission to Mongolia*, HRC, 37th sess, UN Doc. A/HRC/37/58/Add.2 (2 May 2018).

²⁰⁸ *Ibid* [28].

²⁰⁹ *Ibid* [29].

²¹⁰ *Ibid* [31].

government ministries that have mandates relating to children's rights, environmental protection and business regulation.

- (b) **Low levels of awareness or prioritising of the business sector's responsibility to respect children's right to a healthy environment** (and children's rights in general), as evidenced by the lack of clear policy on the issue.
 - (c) **Challenges in balancing economic priorities against environmental protection priorities.** For example, the World Bank observes that Viet Nam and Cambodia have experienced economic booms largely at the expense of their natural resources.²¹¹
 - (d) **Corruption** creates a greater challenge for the effective implementation and enforcement of laws regulating business activities. Cambodia and Mongolia rank the lowest of the Review Countries in the Transparency International Corruption Perception Index 2019, at 162 and 106 respectively.²¹²
 - (e) **The limited influence of government agencies with environmental or child rights portfolios** to promote agendas that support rights protection and enforcement where they conflict with more powerful government agencies, as seen in Fiji with respect to government agencies with environmental portfolios.²¹³
- 5.15 To meet their duty to respect, protect and fulfil children's right to a healthy environment, governments must be able to enforce their existing laws that directly or indirectly protect that right. This includes the regulation of businesses to promote respect for children's right to a healthy environment.

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

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

²¹¹ See, for Cambodia, World Bank, *The World Bank In Cambodia* (Web Page, 2019) available at <<https://www.worldbank.org/en/country/cambodia/overview>>; for Viet Nam, World Bank Group, *Country partnership framework for the Socialist Republic of Viet Nam for the period FY18–FY22* (4 May 2017) <<http://documents.worldbank.org/curated/en/173771496368868576/Vietnam-Country-partnership-framework-for-the-period-FY18-FY22>>.

²¹² Transparency International, *Corruption Perceptions Index 2019* <<https://www.transparency.org/cpi2019>>.

²¹³ Pamela Chasek, 'Confronting Environmental Treaty Implementation Challenges in the Pacific Islands' (2010) 6(1) *Pacific Islands Policy* 1, 11-12.

²¹⁴ UNSR HRE Report (n 3) [46].

²¹⁵ Global Initiative on Advancing Children's Right to a Healthy Environment, *Outcome report for the Regional Expert Consultation for East Asia and the Pacific, Bogor, Indonesia: 22-23 October 2019* <<https://www.childenvironment.org/reports>> 3.

Priority issues for further consideration

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

- (a) Whether countries have published or are developing a NAP BHR. Where countries are developing a NAP, whether there is recognition of child-specific concerns, the *Children's Rights and Business Principles* (especially Principles 3 and 7) and requirement of 'child-rights impact assessments'.
- (b) Using the process of developing a NAP BHR to audit the national law that currently implements the UNGPs, *Children's Rights and Business Principles* and Committee of the Rights of the Child General Comment No 16.
- (c) What factors should be considered in a 'child-rights impact assessment'.
- (d) Whether the business sector has sufficient guidance and support to respect children's right to a healthy environment in their activities.
- (e) Levels of awareness of the *Children's Rights and Business Principles* across government, businesses and other relevant stakeholders.
- (f) Which government agencies have a mandate relevant to regulating, monitoring, or enforcing business respect for children's right to a healthy environment and whether collaboration exists between relevant agencies on this issue.
- (g) Whether the current implementation, monitoring and enforcement of existing laws is sufficient to ensure business respect for children's right to a healthy environment.



Conclusions and Recommendations

Conclusions and Recommendations

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



Ensure the effective implementation and enforcement of existing national law that directly or indirectly respects, protects and fulfils children's right to a healthy environment.

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



Develop regional guiding principles on children's right to a healthy environment

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



Raise public awareness of the nexus between children's rights and the environment at a regional and national level.

States in the Region are encouraged to identify which ministries are responsible for collecting, updating and disseminating environmental information and to allocate sufficient resources to those ministries to ensure that such responsibilities are effectively implemented. States in the Region are urged to raise awareness of children's right to a healthy environment through regional forums, national government, the business sector and civil society. National human rights institutions are encouraged to adopt a multi-sectoral approach that incorporates a focus on, and raises awareness of, the nexus between environmental and children's rights. It is recommended that public information campaigns raise awareness about the content of children's right to a healthy environment and who the rights-holders and duty-bearers of that right are, as well as avenues to access remedies. Such public information campaigns must be practically accessible for children and easy to understand. Pregnant women and parents of young children should be a particular focus, to raise awareness about the environmental risks to unborn children and young infants. States in the Region are advised to assess whether the content of their respective national environmental education curriculums is sufficient to educate children about their environmental rights and to strengthen their capacity to respond to environmental challenges. Children's environmental education should begin early, continue throughout the educational process,²¹⁶ and comprise both formal and informal educational settings such as schools, at home and in the community.²¹⁷



Develop a National Action Plan on business and human rights (NAP BHR) which recognises key international standards and child-specific concerns.

States in the Region are strongly encouraged to develop a NAP BHR and to use the development process as an opportunity to audit whether the current implementation, monitoring and enforcement of existing laws is sufficient to ensure business respect for children's right to a healthy environment. Any gaps can then be identified and addressed. In their NAP BHR, States in the Region are strongly recommended to include a focus on the protection of children's rights, and to commit to clear policy positions on implementing and disseminating key international standards to promote business respect for children's right to a healthy environment; namely the *UN Guiding Principles on Business and Human Rights*,²¹⁸ *Children's Rights and Business Principles* (especially Principles 4 and 7) and Committee of the Rights of the Child General Comment No 16. Government agencies with a mandate relevant to promoting business respect for children's right to a healthy environment should be clearly identified, to ensure collaboration occurs on this issue. In developing their NAP BHR, States in the Region are urged to undertake

²¹⁶ See Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 37th sess, UN Doc A/HRC/37/59 (24 January 2018) annex, principle 6.

²¹⁷ See Committee on the Rights of the Child, *General Comment No.1 (2001), Article 29(1): The Aims of Education*, Convention on the Rights of the Child, UN Doc CRC/GC/2001/1 (17 April 2001) [13].

²¹⁸ See United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" framework* (2011).

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



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



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



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



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



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



Analysis Matrices

ANALYSIS CATEGORIES TABLE | Children’s Right to a Healthy Environment

ANALYSIS CATEGORIES	
1	Air pollution ²¹⁹
2	Water pollution ²²⁰
3	Climate change ²²¹
4	Chemicals, toxic substances and waste ²²²
5	Loss of biodiversity and access to nature ²²³
6	Mining ²²⁴
7	Children’s rights to life, health and development ²²⁵
8	Children’s right to an adequate standard of living ²²⁶
9	Children’s rights to play and recreation ²²⁷
10	Children’s right to an environmental education ²²⁸
11	State obligation to collect, update and disseminate environmental information ²²⁹
12	Public access to environmental information ²³⁰
13	Children’s rights to express views and have them considered ²³¹
14	Participatory rights of children on environmental matters ²³²

²¹⁹ For guidance, see Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 37th sess, Agenda item 3, UN Doc A/HRC/37/58 (26 February–23 March 2018) (‘UNSR HRE Report’) paras 16-18.

²²⁰ Ibid paras 19–21.

²²¹ Ibid paras 22–26.

²²² Ibid paras 27–29.

²²³ Ibid para 30.

²²⁴ For guidance, see UNICEF, *Child Rights and Mining Toolkit* (January 2017) pages 58-65, available at <https://www.unicef.org/csr/files/FINAL_Child_Rights_and_Mining_Toolkit_060217.pdf>.

²²⁵ UNSR HRE Report (n 219) paras 32–33.

²²⁶ Ibid paras 34–35.

²²⁷ Ibid paras 36–37.

²²⁸ Ibid paras 40–41.

²²⁹ Ibid paras 42–46.

²³⁰ Ibid.

²³¹ Ibid paras 47–50.

²³² Ibid para 49.

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

²³³ Ibid para 50.

²³⁴ Ibid paras 51–54.

²³⁵ Ibid paras 63–66.

²³⁶ Ibid para 46.

²³⁷ Ibid.

²³⁸ Ibid paras 59–62.

²³⁹ Ibid para 60.

²⁴⁰ Ibid, para 62.

²⁴¹ Ibid para 72.

²⁴² Ibid paras 61, 74.

²⁴³ Ibid para 75.

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

	I. OVERVIEW	Response
1	Number of relevant national legal instruments enacted since 1989? ²⁴⁴	17 ²⁴⁵
2	Number of relevant national cases since 1989? ²⁴⁶	N/A
3	References to children’s right to a healthy environment in the national constitution?	No
4	Has the country ratified the Convention on the Rights of the Child?	Yes ²⁴⁷
5	Has the country ratified the Optional Protocols on the Convention on the Rights of the Child? (a) Optional Protocol on the involvement of children in armed conflict (2000) (b) Optional Protocol on the sale of children, child prostitution and child pornography (2000) (c) Optional Protocol on a communications procedure (2011)	(a) Yes ²⁴⁸ (b) Yes ²⁴⁹ (c) No ²⁵⁰
6	Is the country a monist or dualist state? ²⁵¹ If dualist, is there a national legal instrument enacting the Convention on the Rights of the Child into national law?	Predominantly dualist. ²⁵² The CRC has been enacted into national law by Article 48 of the <i>Constitution</i> . Further, a 2007 decision of the Constitutional Council found that the CRC is a law that must be enforced by Cambodian courts. ²⁵³

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

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

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

²⁴⁷ Acceded on 15 October 1992.

²⁴⁸ Ratified on 16 July 2004.

²⁴⁹ Ratified on 30 May 2002.

²⁵⁰ See UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure’

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en>.

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

²⁵² The Constitution leaves room for some uncertainty: Meas Bora, ‘The 1993 Cambodian Constitution and International Law: A Normative Perspective’ in Hor Peng, Kong Phallack & Jörg Menzel, *Cambodian Constitutional Law* (Konrad-Adenauer-Stiftung, 2016) 69, at 78-81.

²⁵³ The Constitutional Court found: “The term ‘Laws’ as above referred to means the national laws, including the Constitution which is the supreme law, all the laws that remain in force, and the international laws already recognized by the Kingdom of Cambodia, in particular the Convention on the Children’s Rights.”: Decision No 092/003/2007 CC.D (10 July 2007), <https://www.ccc.gov.kh/detail_info_en.php? txtID=453>.

	II. NATIONAL LEGAL INSTRUMENT (CAMBODIA)	Responsive to which category? ²⁵⁴	Official English translation available?
Constitution			
1	The Constitution of the Kingdom of Cambodia (1993)	Cat 7-8: arts 31*, 48*, 73 Cat 1-6: art 59	Yes – official (FAO) – Link
Laws			
2	Proclamation No. 484 of 2013 on Pesticide Registration and laying down lists of Banned Pesticides (2013)	Cat 4: whole	No – official in Khmer – Link
3	Law on the Management of Pesticides and Fertilizers (2012)	Cat 4: whole	Yes – official (FAO) – Link
4	Protected Areas Law (2008)	Cat 5: whole	Yes – official (FAO) – Link
5	Law on Water Resources Management of the Kingdom of Cambodia (2007)	Cat 2: whole	Yes – official (FAO) – Link
6	Sub-decree for the Creation of a National Committee for Managing Climate Change (2006)	Cat 3: whole	Yes – official (FAO) – Link
7	Law on Forestry (2003)	Cat 5: whole	Yes – official (FAO) – Link
8	Law on Mineral Resource Management and Exploitation (2001)	Cat 6: whole	Yes – official (FAO) – Link
9	Sub-decree on the Control of Air Pollution and Noise Disturbance (2000)	Cat 1: whole	Yes – official (FAO) – Link
10	Sub-decree on Air Pollution (1999)	Cat 1: whole	No – official in Khmer – Link
11	Sub-decree on Water Pollution Control (1999)	Cat 2: whole	Yes – official (FAO) – Link
12	Sub-decree on Environmental Impact Assessment Process (1999)	Cat 12: whole	Yes – official (FAO) – Link

²⁵⁴ Categories are outlined in the Analysis Categories Table on page 47 of this Paper.

13	Law on Environmental Protection and Natural Resource Management (1996)	Cat 5: arts 6*, 7 Cat 1-6: art 8	Yes – official (FAO) – Link
14	Law on the Protection of Cultural Heritage (1996)	Cat 5: whole	Yes – official (FAO) – Link
15	Law on the Establishment of the Ministry of Industry, Mines and Energy (1996)	Cat 6: whole	Yes – official (Ecolex) – Link
16	Regulations on the Creation and Designation of Protected Areas (1993)	Cat 5: whole	Yes – official (FAO) – Link
17	Petroleum Regulations (1991)	Cat 6: whole	Yes – official (Ecolex) – Link

Notes

* *This legal provision responds to the category and is specific to children's rights.*

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

	I. OVERVIEW	Response
1	Number of relevant national legal instruments enacted since 1989? ²⁵⁵	44 ²⁵⁶
2	Number of relevant national cases since 1989? ²⁵⁷	2 ²⁵⁸
3	References to children’s right to a healthy environment in the national constitution?	There is reference to a right to a healthy environment, but this right is not specific to children. ²⁵⁹
4	Has the country ratified the Convention on the Rights of the Child?	Yes ²⁶⁰
5	Has the country ratified the Optional Protocols on the Convention on the Rights of the Child? (a) Optional Protocol on the involvement of children in armed conflict (2000) (b) Optional Protocol on the sale of children, child prostitution and child pornography (2000) (c) Optional Protocol on a communications procedure (2011)	No, Fiji has not ratified the Optional Protocols to the Convention on the Rights of the Child. It has signed the first two of these Optional Protocols. ²⁶¹
6	Is the country a monist or dualist state? ²⁶² If dualist, is there a national legal instrument enacting the Convention on the Rights of the Child into national law?	Fiji is a dualist state. ²⁶³ No single national legal instrument enacts the CRC into domestic law. ²⁶⁴

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

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

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

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

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

²⁶⁰ Ratified on 13 August 1993.

²⁶¹ Fiji signed the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* on 16 September 2005 but has not ratified it: see <<https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280000815&clang=en>>. Fiji signed the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* on 16 September 2005 but has not ratified it: see <<https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280001282&clang=en>>. Fiji has not signed the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*.

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

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

²⁶⁴ Various national laws seek to give effect to the CRC, e.g. the *Domestic Violence Act 2009* (Fiji) s 6(c) seeks to give effect to the CRC; the *Mental Health Act 2010 (No. 54 of 2010)* (Fiji) s 4(b) requires due regard to be given to the CRC; the *Family Law Act 2003* (Fiji) s 26(e) requires courts to consider the principles of the CRC.

	II. NATIONAL LEGAL INSTRUMENT (FIJI)	Responsive to which category? ²⁶⁵	Official English translation available?
Constitution			
1	Constitution of the Republic of Fiji (2013)	Cat 3: Chapter 1 art 1(h) and art 40* Cat 4: Chapter 1 art 1(h) and art 40* Cat 7: Chapter 2 art 41* Cat 8: Article 41* Cat 12: Articles 25 and 150	Yes – official – Link
Laws			
2	Information Act (2018)	Cat 11: Section 35 Cat 12: Sections 5, 6 and 12	Yes – official – Link
3	Rights of Persons with Disabilities Act (2018)	Cat 8: Section 46 Cat 13: Section 30(2)*	Yes – official – Link
4	Child Care and Protection Bill (2017) ²⁶⁶	Cat 7: Sections 5*, 6*, 7*, 8*, 9*, 15*, 17*, 29*, 30*, 35*, 62*, Part 5* Cat 8: Sections 6*, 7*, 8*, 9*, 15*, 17*, 35*, 62* Cat 9: Section 6* Cat 13: Section 48* Cat 16: Sections 17*, 62(l)* Cat 17: Section 6(h)*	Yes – not publicly available
5	COP 23 Presidency Trust Fund Act (2017) (Climate Action Trust Fund Act 2017)	Cat 3: Section 4	Yes – official – Link
6	Environment Levy (Budget Amendment) Act (2017)	Cat 3: Sections 6, 7, 8, 9, 10, 11 and 12 Cat 5: Sections 6 and 7	Yes – official – Link
7	Aquaculture Bill (2016) ²⁶⁷	Cat 2: section 5(e) Cat 5: section 5(f) Cat 11: section 5(g) Cat 22: sections 5(b)-(c)	Yes – official – Link
8	Forest Bill (2016) ²⁶⁸	Cat 5: Sections 34 and 35 Cat 11: Section 5 Cat 12: Section 5(j)	Yes – official – Link

²⁶⁵ Categories are outlined in the Analysis Categories Table on page 47 of this Paper.

²⁶⁶ This is a draft document that is currently pending legislative approval.

²⁶⁷ This is a draft document that is currently pending legislative approval.

²⁶⁸ This is a draft document that is currently pending legislative approval.

9	Heritage Bill (2016) ²⁶⁹	Cat 11: Sections 6* and 7	Yes – official – Link
10	Land and Water Resources Management Bill (2016) ²⁷⁰	Cat 10: Section 4(b) Cat 11: Section 4 Cat 12: Section 16	Yes – official – Link
11	International Seabed Mineral Management Act (2013)	Cat 2: Sections 4(c)(ii), 10(b)(iii), 49(2)(c) Cat 5: Section 4(c)(i) Cat 11: Section 9 Cat 22: Section 34	Yes – official – Link
12	Maritime Transport Act (2013)	Cat 2: Part 10 Cat 4: Sections 134, 135 and 137 Cat 22: Section 231	Yes – official – Link
13	Offshore Fisheries Management Act (2012)	Cat 2: Section 6(f) Cat 4: Section 6(f) Cat 5: Part 4 Cat 11: Section 6(l) Cat 12: Section 9(1)(g) Cat 22: Sections 6(b), 6(d)	Yes – official – Link
14	Child Welfare Act (2010)	Cat 7: Sections 4* and 10* Cat 13: Section 15* Cat 16: Section 10*	Yes – official – Link
15	Human Rights and Anti-Discrimination Commission Act (2009)	Cat 16: Sections 12(b), 12(d), 12(j), 12(k), 27, 28, 33, 40, 41, 42	Yes – official – Link
16	Radiation Health Act (2009)	Cat 4: Sections 20, 21, 22, 23 and 24	Yes – official – Link
17	Litter Act (2008)	Cat 4: Sections 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17	Yes – official – Link
18	Environment Management (EIA Process) Regulations (2007)	Cat 1: Regulations 25(1)(e) and 25(2) Cat 2: Regulations 25(1)(e) and 25(2) Cat 11: Regulation 18 Cat 12: Regulation 18 Cat 12: Regulation 30	Yes – official – Link
19	Water Authority of Fiji Act (2007)	Cat 2: Section 7 Cat 4: Sections 7(c), 7(d), 7(g)	Yes – official – Link

²⁶⁹ This is a draft document that is currently pending legislative approval.

²⁷⁰ This is a draft document that is currently pending legislative approval.

20	Environment Management Act (2005)	Cat 2: Sections 11(1), 14, 45, 50, Part 5 Cat 4: Sections 11(1), 14, 35, 45 Cat 5: Section 3(3) Cat 7: Section 3(3) Cat 10: Section 13(3)(c) Cat 11: Sections 12, 13 and 22 Cat 12: Sections 10, 17, 22 and 34 Cat 22: Section 8	Yes – official – Link
21	Family Law Regulations (2005)	Cat 13: Regulation 73(4)(c)*	Yes – official – Link
22	Family Law Act (2003)	Cat 13: Section 122*	Yes – official – Link
23	Natural Disaster Management Act (1998) ²⁷¹	Cat 3: Sections 5, 8, 9 and 11 Cat 12: Sections 5(b), 8(3)(h), 18 and 21	Yes – official – Link
24	Ozone Depleting Substances Act (1998)	Cat 4: Sections 8, 9, 10, 11, 12, 13, 14 Cat 11: Section 10	Yes – official – Link
25	Forest Act (1992)	Cat 5: Sections 6, 7, 8, 23 and 28	Yes – official – Link
Policies, Programmes, Plans and other			
26	National Climate Change Policy 2018-2030 (2019)	Cat 2: Section 3 (page 55) Cat 3: Whole Cat 4: Section 3 (page 50) Cat 5: Section 3 (page 58) Cat 10: Section 1 (page 17)* Cat 11: Section 3 Objective 1.2, Goal 1, Points 10 and 11 (page 49) Cat 12: Section 1 (page 31), Section 3 Objective 5.1 (page 66) and Objective 5.2 (page 68) Cat 17: Section 1 Policy Pillars (pages 33–34) Cat 22: Section 1 Policy Pillars (page 35)	Yes – official – Link

²⁷¹ This Act is currently subject to a consultative review process to ensure that national legislative frameworks respond to present and future needs in disaster management: Vivita Matanimeka, 'Fiji Government review National Disaster Management Act & Plan' (Media Release, 21/05/2018), Pacific Community, Building Safety and Resilience in the Pacific Project, available at: <http://bsrp.gsd.spc.int/index.php/2018/05/21/fiji-government-reviews-national-disaster-management-act-plan/>.

27	Republic of Fiji National Adaptation Plan, <i>A pathway towards climate resilience</i> (2018)	Cat 2: Section 16 (page 88) Cat 3: Whole, Section 6 (page 38 – 39)* Cat 5: Section 16 Cat 7: Section 13 Cat 17: Section 6 (page 38)	Yes – official – Link
28	National Child Protection Strategy (2018) (Draft) ²⁷²	Cat 7: Whole* Cat 8: Whole* Cat 9: Whole*	Yes – not publicly available
29	National Disaster Risk Reduction Policy 2018-2030 (2018) (Draft) ²⁷³	Cat 13: Section 6.3 ([77])* Cat 14: Section 6.2 ([70] and [71]), Section 6.3 ([73] ²⁷⁴ and [77])* Cat 15: [75], [76]* Cat 17: [75]*	Yes – not publicly available
30	5-Year & 20-Year National Development Plan (2017)	Cat 2: Section 1.1 (page 3), section 3.1.1, 3.2.2 (pages 78 to 79) Cat 3: 2.6, 3.1.2, 3.2.9 Cat 5: 3.2.13, 3.2.14 Cat 6: 3.2.15 Cat 7: 3.1.6* Cat 9: 3.1.8* Cat 10: 3.1.5* Cat 11: 3.1.1 (page 19) Cat 12: 2.5 (pages 15-16) Cat 17: 1.0 Cat 22: Preamble and 2.6	Yes – official – Link
31	National Biodiversity Strategy and Action Plan for Fiji 2017–2024 (2017)	Cat 2: Section 5.3 Focus Area 6 Target 8 and Strategic Area SUD5 Cat 3: Section 5.3 Focus Area 6 SUD3.2 Cat 4: Section 5.3 Focus Area 6 SUD4 Cat 5: Whole Cat 6: Section 5.0 Focus Area 2 PA2.9, Section 5.3 Focus Area 6 – SUD1, SUD3, SUD4, SUD5 Cat 11: Section 5.0 Focus Area 1 IK1.2 Cat 12: Section 5.0 Focus Area 1 IK1.11, Section 5.3 Focus Area 6 – SUD4.1, SUD6.9 Cat 22: Section 1.1 Box 1.1 (page 6)	Yes – official – Link

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

²⁷³ This is a draft document that is in the process of finalisation and has not yet been released by the Government of Fiji.

²⁷⁴ Refers to 'vulnerable groups', which includes 'young people' (see page iii of the draft Policy).

32	National Humanitarian Policy for Disaster Risk Management (2017)	Cat 3: Section 2.0 Cat 11: Sections 2.0 and 3.2 Cat 12: Sections 2.0, 3.1(f), 3.1(g)	Yes – official – Link
33	Interagency Guidelines (IAG) on Child Abuse and Neglect (2015)	Cat 7: Whole* Cat 8: Whole* Cat 16: Whole* Cat 24: Section on 'Roles and Responsibilities of Agencies', para 8 (page 14)*	Yes – not publicly available
34	Fiji's 2 nd , 3 rd and 4 th Report on the Convention on the Rights of the Child (2013)	Cat 8: Section VI(e)-(g) (pages 83–84)* Cat 13: Section IV(c) (page 40)*	Yes – official – Link
35	Child Protection Guidelines for Healthcare Workers in Fiji (2012)	Cat 7: Sections II, III and IV*	Yes – official – Link
36	Fiji Government News Release (13 Mar 2012)	Cat 10: Paragraph 6* Cat 14: Paragraph 5*	Yes – official – Link
37	Fiji Government News Release (02 Feb 2011)	Cat 3: Paragraph 1*	Yes – official – Link
38	National Youth Policy (2011)	Cat 3: Section 6.8.1* Cat 5: Section 2.8* Cat 7: Section 2.4* Cat 9: Sections 2.3* and 6.3.1* Cat 14: Section 2.8*	Yes – official – Link
39	National Solid Waste Management Strategy 2011-2014 (undated)	Cat 4: Section 4.3 Cat 22: Section 5.1	Yes – official – Link
40	National Policy on Persons Living with Disabilities 2008-2018 (2008)	Cat 9: Strategic Policy Areas Objectives 10.1 and 10.2	Yes – official – Link
41	National Action Plan to Combat Desertification/Desertification and to Mitigate Against Drought (2007)	Cat 1: Section 5.3 Cat 2: Sections 3.1, 3.2, 5.2, 5.3 Cat 3: Sections 5.2 and 5.3 Cat 4: Sections 3.1, 3.2, 5.2 and 5.3 Cat 5: Sections 3.1 and 5.2 Cat 6: Section 3.1 (page 27) Cat 12: Section 5.3.9*	Yes – official – Link
42	National Air Pollution Control Strategy (2007)	Cat 1: Whole Cat 7: Section 4.5 Cat 10: Section 2.1.5	Yes – official – Link

43	National Curriculum Framework (2007)	Cat 10: Section 4 'Environmental Education for Sustainability' (page 33)*	Yes – official – Link
44	National Disaster Management Plan (1995) ²⁷⁵	Cat 11: Section Four Cat 12: Sections Four (Public Broadcast & Dissemination of Warnings) and Six	Yes – official – Link
Case Law			
45	<i>Fiji Fish Marketing Group Ltd v Pacific Cement Ltd</i> [2017] FJHC 252; Civil Action 68.2017 (22 Mar 2017)	Cat 4: [41], [46], [52], [53]	Yes – official – Link
46	<i>Nasinu Town Council v Khan</i> [2011] FJMC 82; Civil case no. 592/2010 (2012)	Cat 4: [63]-[64] Cat 5: [63]	Yes – official – Link

Notes

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

²⁷⁵ This Plan is currently subject to a consultative review process to ensure that national legislative frameworks respond to present and future needs in disaster management: Vivita Matanimeka, 'Fiji Government review National Disaster Management Act & Plan' (Media Release, 21/05/2018), Pacific Community, Building Safety and Resilience in the Pacific Project, available at: <<http://bsrp.gsd.spc.int/index.php/2018/05/21/fiji-government-reviews-national-disaster-management-act-plan/>>.

INDONESIA | Analysis Matrix | Children's Right to a Healthy Environment

	I. OVERVIEW	Response
1	Number of relevant national legal instruments enacted since 1989? ²⁷⁶	41 ²⁷⁷
2	Number of relevant national cases since 1989? ²⁷⁸	3 ²⁷⁹
3	References to children's right to a healthy environment in the national constitution?	There is a right to a healthy environment, but this right is not specific to children. ²⁸⁰
4	Has the country ratified the Convention on the Rights of the Child?	Yes ²⁸¹
5	Has the country ratified the Optional Protocols on the Convention on the Rights of the Child? (a) Optional Protocol on the involvement of children in armed conflict (2000) (b) Optional Protocol on the sale of children, child prostitution and child pornography (2000) (c) Optional Protocol on a communications procedure (2011)	(a) Yes ²⁸² (b) Yes ²⁸³ (c) No ²⁸⁴
6	Is the country a monist or dualist state? ²⁸⁵ If dualist, is there a national legal instrument enacting the Convention on the Rights of the Child into national law?	There is no clear consensus on the issue of whether Indonesia is a monist or dualist State. ²⁸⁶ The CRC has not been fully incorporated into Indonesia's domestic law. ²⁸⁷

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

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

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

²⁷⁹ Please note that Indonesian jurisprudence is not considered a source of law with precedential value. Therefore, courts are not bound to follow previous court decisions.

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

²⁸¹ Ratified on 5 September 1990.

²⁸² Ratified on 24 September 2012.

²⁸³ Ratified on 24 September 2012.

²⁸⁴ See <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtsg_no=IV-11-d&chapter=4&clang=en>.

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

²⁸⁶ *Constitution*, art 11. It has been suggested that Indonesia adopts aspects of both monist and dualist practice: see E Pratomo (2018), Indonesian Practice Within the Framework of the Development of the National Legal System, *Journal of Legal, Ethical and Regulatory Issues*, 21(2), <https://www.abacademies.org/articles/the-legal-status-of-treatyinternational-agreement-and-ratification-in-the-indonesian-practice-within-the-framework-of-the-developm-7183.html>. Butt suggests that while Indonesia appears dualist in practice, there is some evidence of monism: Butt (2014), 'The Position of International Law within the Indonesian Legal System', *Emory Law Review* (2014) 28(1).

²⁸⁷ See Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Indonesia*, UN Doc No. CRC/C/IDN/CO/3-4 (13 June 2014) [11] <<https://www.refworld.org/publisher.CRC.,IDN,541bef294,0.html>>.

	II. <u>NATIONAL LEGAL INSTRUMENT (INDONESIA)</u>	Responsive to which category? ²⁸⁸	Official English translation available?
Constitution			
1	The Constitution of the Republic of Indonesia (1945)	Cat 1: Art 28H(1) Cat 2: Art 28H(1) Cat 3: Art 28H(1) Cat 4: Art 28H(1) Cat 5: Art 28H(1) Cat 7: Arts 28A, 28B(2), * 28I Cat 17: Art 28H(1)	Yes – official (UNESCO) – Link
Laws			
2	Law of the Republic of Indonesia No 39 of 2014 about Plantations (2014)	Cat 5: Arts 62, 67	Yes – official (FAO) - Link
3	Law No 6 of 2014 on Villages (2014)	Cat 5: Art 26(4)(o) Cat 7, 8: Arts 74(2), 78(1)	Yes – official – Link
4	Law No 3 of 2014 on Industrial Affairs (2014)	Cat 22: Arts 1, 77, 78(1), 79(1)-(2), 80(1), 80(3)-(4)	Yes – official – Link
5	Law No 1 of 2014 amending Law No 27 of 2007 on the Management of Coastal Area and Isles (2014)	Cat 12, 13, 16, 24: Art 60	Yes – official (FAO) - Link
6	Law No 18 of 2013 on the Prevention and Eradication of Forest Destruction (2013)	Cat 7: Art 58(1) Cat 12: Art 58(2)(a)-(c) Cat 13, 14, 15, 17: Arts 58(2)(d)-(e), 61 Cat 22: Chapter V Cat 23: Arts 64, 66 Cat 24: Arts 10, 50, 52	Yes – official (FAO) - Link
7	Regulation No 27 of 2012 on Environmental Licences (2012)	Cat 13, 14: Art 9 Cat 20: Art 29(4)(a)	No – official in Indonesian – Link

²⁸⁸ Categories are outlined in the Analysis Categories Table at page 47 of this Paper.

8	Regulation of the Ministry of Women's Empowerment and Child Protection No 12 of 2011 on Indicators of Child-Friendly Cities (2011)	Cat 7, 8, 9: Whole* Cat 1: Art 10(i) Cat 2: Art 10(h)	No – official in Indonesian – Link
9	Government Regulation No 10 of 2010 on the Procedure of Altering the Appropriation and Function of Forest Areas (2010)	Cat 3, 5, 7, 20: Arts 1(18), 14, 15	Yes – official (FAO) - Link
10	Law No 36 of 2009 concerning Health (2009)	Cat 1: Art 162, 163 Cat 2: Art 162, 163 Cat 4: Art 162, 163 Cat 7: Arts 6, 130*, 131*, 132*, 133*	Yes – official (FAO) - Link
11	Law No 32 of 2009 - Environmental Protection and Management (2009)	Cat 1: Arts 3(a)*, 20(2)(d)-(e), 57(1), 57(4) Cat 2: Arts 3(a)*, 20(2)(a)-(c) Cat 3: Arts 57(1), 57(4), recital (e) Cat 5: Art 57(1) Cat 7, 8: Art 65(1) Cat 10, 14: Art 65(2) Cat 11, 12: Art 62 Cat 13, 14, 15: Arts 65(3), 70, 91 Cat 20: Arts 47, 49 Cat 22: Arts 15, 16	Yes – official (FAO) - Link
12	Regulation of the Minister of Forestry of RI No 60/Menhut-II/2009 on Guideline for Evaluation of Successful Forest Reclamation (2009)	Cat 5: Art 3	Yes – official (FAO) - Link
13	Law No 45 of 2009 amending Law No 31 of 2004 concerning Fishery (2009)	Cat 7, 8: Art 2 (as amended)	Yes – official (FAO) - Link
14	Government Regulation of the Governor of Jakarta Capital City Provincial Special Region No 76 of 2009 on the Management of Hazardous and Toxic Waste (2009)	Cat 4: Art 3* Cat 11: Art 6(a) Cat 13, 14: Art 11(1)(b)	Yes – official (FAO) - Link
15	Law No 18 of 2008 regarding Rubbish Management (2008)	Cat 3: Recitals Cat 4: Whole Cat 7: Art 4 Cat 14: Arts 28, 36	Yes – official (FAO) - Link
16	Government Regulation of the Republic of Indonesia No 21 of 2008 concerning Disaster Management (2008)	Cat 7: Art 53(1)*	Yes – official (FAO) - Link

17	Government Regulation No 6 of 2007 on Forest Arrangement and Formulation of Forest Management Plan as well as Forest Exploitation (2007)	Cat 5: Whole	Yes – official (FAO) – Link
18	Government Regulation No 60 of 2007 regarding the Conservation of Fishery Resources (2007)	Cat 5: Whole	Yes – official (FAO) – Link
19	Regulation of the Minister of Home Affairs No 1 of 2007 on the Arrangement of Green Open Spaces in the Cities (2007)	Cat 1: Art 3(b) Cat 2: Arts 3(b)*, 3(d) Cat 5: Recital a*, Art 2* Cat 9: Art 4(f)*	Yes – official (FAO) – Link
20	Law of the Republic of Indonesia No 24 of 2007 Concerning Disaster Management (2007)	Cat 7: Art 55*	Yes – official – Link
21	Law No 26/2007 concerning Spatial Planning (2007)	Cat 5: Arts 2(c), 3	Yes – official (FAO) – Link
22	Law No 27 of 2007 on the Management of Coastal Area and Isles as amended by Law No. 1/2014 (2007)	Cat 6: Art 35 Cat 11, 12: Arts 42, 43, 44 Cat 12, 13, 16, 24: Art 60 Cat 13, 14: Arts 68, 69 Cat 22: Art 33	Yes – official (FAO) – Link (original statute) Yes – official (FAO) – Link (amending statute)
23	Regulation of the Minister of Public Works No 21/PRT/M/2006 on National Policy and Strategy of Rubbish Management System Development (KSNP-SPP) (2006)	Cat 4: Whole	Yes – official (FAO) – Link
24	Regulation of the Minister of Public Works No 20 PRT/M/2006 on National Development Policy and Strategy of Drinking-Water Supply System (KNSP-SPAM) (2006)	Cat 7: Arts 3, 4	Yes – official (FAO) – Link
25	Law No 31 of 2004 on Fisheries as amended by Law No 45 of 2009 (2004)	Cat 2: Art 12(1) Cat 5: Arts 3, 8, 11 Cat 11: Art 46 Cat 12: Art 10(1)(a) Cat 23: Arts 10(1), 10(2)	Yes – official (FAO) – Link (original statute) Yes – official (FAO) – Link (amending statute)

26	Law No 7 of 2004 on Water Resources (2004) ²⁸⁹	Cat 2: Arts 20, 21, 24, 26(6) Cat 7: Arts 3, 5 Cat 10: Arts 70, 71 Cat 12: Art 82(a), Chapter VII Cat 13: Art 82(d) Cat 16: Arts 82(b)(e)-(f), Chapter XIV, Art 84	Yes – official (FAO) – Link
27	Government Regulation on Land Use Management No 16 of 2004 (2004)	Cat 5: Arts 2, 15 Cat 10: Art 18	Yes – official (FAO) – Link
28	Government Regulation No 35 of 2002 on Reforestation Fund (2002)	Cat 5: Whole	Yes – official (FAO) – Link
29	Law No 23 of 2002 on Child Protection (2002)	Cat 10: Arts 49, 50(e)	No – official in Indonesian (ILO) – Link
30	MPR Decree No IX/MPR/2001 on Agrarian Reform and Management of Natural Resources (2001)	Cat 1: Arts 3, 4(g)*, 5(2)(c) Cat 2: Arts 3, 4(g)*, 5(2)(c) Cat 5: Arts 3, 4(g)*, 5(2)(c), 5(2)(f)	Yes – official (FAO) – Link
31	Government Regulation No 82 of 2001 on Management of Water Quality and Control over Water Pollution (2001)	Cat 2: Arts 15, 18, 24, 30(2), 31, 50 Cat 12: Art 30(2) Cat 14: Art 30(3)	Yes – official (FAO) – Link
32	Penal Code of Indonesia (1999)	Cat 2, 4: Arts 202, 203	Yes – official (OECD) – Link
33	Regulation No. 18 of 1999 on the Management of Hazardous and Toxic Materials (1999)	Cat 4: Art 3 Cat 24: Art 21	Yes – official (FAO) – Link
34	Forestry Act No. 41 of 1999 (1999)	Cat 5: Recitals*, Arts 3, 33(2) Cat 10: Art 8 Cat 12: Arts 53(4), 54 Cat 16, 24: Arts 74, 76	Yes – official – Link
35	Law No 39 of 1999 on Human Rights (1999)	Cat 7, 8: Art 9(3)	Yes – official (ILO) – Link
36	Government Regulation No. 27 of 1999 on Analysis of Environmental Impacts (1999)	Cat 20: Arts 3, 5, 22	Yes – official (FAO) – Link

²⁸⁹ This statute was revoked by the Constitutional Court on 18 February 2015. The Constitutional Court reinstated the earlier law until a new measure was adopted (see below item 46).

37	Government Regulation No. 19 of 1999 on Control over Marine Contamination and/or Damage (1999)	Cat 2: Arts 10, 16 Cat 4: Art 18 Cat 16: Art 24(2)	Yes – official (FAO) – Link
38	Law No. 5 of 1990 concerning Conservation of Living Resources and their Ecosystems (1990)	Cat 5: recital (a)*, (c)*; Arts 3, 4, 5*, 11, 12, 14-15, 21, 26 ff Cat 24: Art 40	Yes – official (FAO) – Link
39	Act No 4 of 1982 concerning Basic Provisions for the Management of the Living Environment ²⁹⁰	Cat 1: Arts 4(e), 17, 21, 22 Cat 2: Arts 4(e), 17, 21, 22 Cat 5: Arts 4(d)*, 8(1) Cat 7: Art 5 Cat 12: Arts 8, 9 Cat 14: Art 6(1) Cat 16: Arts 20, 21, 22	Yes – official (FAO) – Link
40	Law No 11 of 1974 on Water Resources Development (1974) ²⁹¹	Cat 2: Art 10(c) Cat 5: Art 13* Cat 14: Art 12	Yes – official – Link
Policies, Programmes, Plans and other			
41	National Action Plan on Business and Human Rights (2017) ²⁹²	Cat 19: page 33* Cat 21: pages 8, 60*	Yes – official – Link
42	First Nationally Determined Contribution of the Republic of Indonesia (2016)	Cat 3: whole, page 6*	Yes – official – Link
43	Program for Pollution Control, Evaluation, and Rating (1995) ('PROPER')	Cat 1, 2, 4, 11, 12: Whole	Yes (summary document) – official (World Bank) – Link

²⁹⁰ This legal instrument is beyond the review criteria as it is dated pre-1989, and only included due to relevance to identified case law listed at (44) and (45). This law was repealed and replaced by Law No 32 of 2009 (see above, item 11).

²⁹¹ This legal instrument is beyond the review criteria as it is dated pre-1989, and only included due to relevance to identified case law listed at (46).

²⁹² This National Action Plan was developed by the National Commission on Human Rights (Komnas HAM) and civil society organisation Institute for Policy Research and Advocacy (ELSAM). It has not been formally adopted by the Republic of Indonesia and is not therefore recorded as a national legal instrument responsive to the Analysis Categories Table in Figure 4 of this Paper. It is included in this Analysis Matrix on the basis that it currently informs the development of a formal National Action Plan that will be adopted by Indonesia.

Case Law

44	Supreme Court Decision No 157/G/LH/2017/PTUN.BDG (18 May 2018)	<p>Cat 5, 7, 8, 13, 14</p> <p>Summary: this case was an appeal from a lower court's decision to cancel a building permit issued to a corporation to construct a tall building in a residential area. At first instance, the Plaintiffs, who were local residents in the intended construction zone, argued (among other things) that they had a communal right to a good and healthy environment, and to participate in environmental management under articles 65 and 70 of <i>Law No 32 of 2009</i>.</p> <p>Held: the Supreme Court upheld the decision to cancel the permit. The permit issuing procedure was considered flawed because the residents were not given an opportunity to respond to the building plan.</p>	No – official in Indonesian – Link
45	Supreme Court Decision No 187 K/TUN/LH/2017 (17 May 2017)	<p>Cat 2, 4, 7, 22</p> <p>Summary: this was an appeal from a lower court's decision to cancel permits issued to allow companies to dispose of liquid waste in a river. At first instance, the Plaintiffs (WAHLI and another environmental NGO) successfully sought to have the licences nullified because the water and soil in the area were already highly polluted and the Defendant had previously been sanctioned for polluting the same water. The Plaintiffs argued that issuing the permits was contrary to the principles under art 2 of <i>Law No 32 of 2009</i>.</p> <p>Held: the Supreme Court upheld the decision to cancel the permits, in particular noting that articles 65(2) and 70(1) of <i>Law No 32 of 2009</i> grants every person the right to a good and healthy environment as a human right, and that the licences had been issued without regard to environmental impacts or the principles of environmental management.</p>	No – official in Indonesian – Link
46	Constitutional Court Decision No 85/PUU-XI/2013 (2013)	<p>Cat 2, 12, 14</p> <p>Summary: the claimants sought a declaration that <i>Law No 7 of 2004 on Water Resources</i> was contrary to the <i>Constitution</i>, and therefore did not have binding legal force, on the basis that the law-making process had been tainted by private commercial interests, including the monopolisation of water resources for profit rather than for the greater prosperity of the population.</p>	No – official in Indonesian – Link

Held: the Constitutional Court revoked *Law No 7 of 2004*, on the basis that it did not comply with key principles limiting the management of water resources, as required under the *Constitution*. The Court acknowledged that water resources are a human right, and a critical factor in ensuring humans are able to live well. The earlier *Law No 11 of 1974 on Water Resources* was reinstated as an interim measure.

Notes

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

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

	<u>I. OVERVIEW</u>	Response
1	Number of relevant national legal instruments enacted since 1989? ²⁹³	57 ²⁹⁴
2	Number of relevant national cases since 1989? ²⁹⁵	1 ²⁹⁶
3	References to children’s right to a healthy environment in the national constitution?	There is a right to a healthy environment for all citizens, ²⁹⁷ but this right is not specific to children.
4	Has the country ratified the Convention on the Rights of the Child?	Yes ²⁹⁸
5	Has the country ratified the Optional Protocols on the Convention on the Rights of the Child? (a) Optional Protocol on the involvement of children in armed conflict (2000) (b) Optional Protocol on the sale of children, child prostitution and child pornography (2000) (c) Optional Protocol on a communications procedure (2011)	(a) Yes ²⁹⁹ (b) Yes ³⁰⁰ (c) Yes ³⁰¹
6	Is the country a monist or dualist state? ³⁰² If dualist, is there a national legal instrument enacting the Convention on the Rights of the Child into national law?	Monist ³⁰³

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

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

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

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

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

²⁹⁸ Ratified on 5 July 1990.

²⁹⁹ Ratified on 6 October 2004.

³⁰⁰ Ratified on 27 June 2003.

³⁰¹ Ratified on 28 September 2015.

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

³⁰³ *Constitution* art 10(3).

II. NATIONAL LEGAL INSTRUMENT (MONGOLIA)		Responsive to which category? ³⁰⁴	Official English translation available?
Constitution			
1	Constitution of the People's Republic of Mongolia (1992)	Cat 1: arts 16(2), 38(2)(4) Cat 2: arts 16(2), 38(2)(4) Cat 3: arts 16(2), 38(2)(4) Cat 4: arts 16(2), 38(2)(4) Cat 5: arts 16(2), 38(2)(4) Cat 6: arts 16(2), 38(2)(4) Cat 7: arts 16(1), 16(2), 16(6)	Yes – official – Link
Laws			
2	Law on Food (3 May 2018)	Cat 12: arts 6.4.4, 7.2.2, 7.2.3	No – official in Mongolian – Link
3	Law on Youth Development (18 May 2017)	Cat 7: arts 3*, 10.1.1* Cat 14: art 3* Cat 15: art 5* Cat 17: art 5*	No – official in Mongolian – Link
4	Law on Health (4 Feb 2016)	Cat 1: arts 4.3.1, 4.3.2, Cat 2: arts 4.1.4, 4.1.5 Cat 7: arts 1, 4, 4.4, 13.1.3*, 14.1.1 Cat 10: art 15.1* Cat 14: art 14.1.5 Cat 22: art 2.2	No – official in Mongolian – Link
5	Law on Child Protection (2016)	Cat 7: art 5.2*	Yes – official – not publicly available
6	Law on Healthcare (3 Jan 2013)	Cat 7: arts 5.1.3*, 6.2, 9, 10, 11	No – official in Mongolian – Link
7	Law on Water (17 May 2012)	Cat 2: whole – especially arts 12.1.4, 13.1.3, 15.1.2, 17.1.9, 19.1.3, 22, 24, 25, 28.16, 29.2.7, 30.1.3 Cat 3: art 23 Cat 4: arts 17.1.9, 24, 25 Cat 11: arts 6, 7, 10.1.17, 17.1.5, Cat 16: arts 20.4.3, 25.3, 33 Cat 22: art 2.2	Yes – unofficial (FAO) – Link

³⁰⁴ Categories are outlined in the Analysis Categories Table at page 47 of this Paper.

8	Law on Water Pollution Fees (17 May 2012)	Cat 2: whole – especially arts 4, 5 Cat 22: art 2.2	No – official in Mongolian – Link
9	Law on Natural Resources Use Fee (17 May 2012)	Cat 5: arts 5, 7, 12, 14, 17	No – official in Mongolian – Link
10	Law on Forestry (17 May 2012)	Cat 5: arts 5, 8, 12.1.4, 13.1.3, 13.1.17, 18.2.5 Cat 10: arts 20.2.3*, 20.2.7*, 41.2.1*, 41.2.3 Cat 11: arts 6, 13.1.16, 13.1.33, 13.1.34, 18.2.17, 18.3.10, 19.2.3, 41.1 Cat 12: arts 13.1.29, 15.1.2, 20.1, 25.1.3, 41 Cat 16: arts 20.1.1, 45 Cat 22: art 2.2	Yes – official (FAO) – Link
11	Law on Air (2012)	Cat 1: whole – especially art 6.1.1 Cat 16: art 9.1.10	No – official in Mongolian – not publicly unavailable
12	Law on Soil Protection and the Prevention of Desertification (17 May 2012)	Cat 6: ch 9 Cat 11: art 6.2, ch 10 Cat 12: art 6.2, ch 10	Yes – official in Mongolian – Link
13	Law on Environmental Impact Assessments (2012)	Cat 5: art 1 Cat 6: arts 4.2, 6.3 Cat 13: art 5.4.8 Cat 11: arts 7.6, 10.1.3 Cat 12: art 7.5	Yes – official in Mongolian (FAO) – Link
14	Law on Health (5 May 2011)	Cat 7: art 4 Cat 10: art 8.1.21 Cat 12: art 19.26 Cat 17: art 4.1.2 Cat 22: arts 2.2, 4.1.6	Yes – official in Mongolian – Link
15	Law on Air Policy (24 June 2010)	Cat 1: whole – especially arts 1, 4, 5 Cat 16: art 10.2 Cat 22: art 2.2	Yes – official in Mongolian – Link
16	Law on Health and Health Composition (27 May 2010)	Cat 7: art 27.4.2* Cat 12: arts 26.2, 26.3, 27.1, 27.4.2*	Yes – unofficial – Link
17	Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas (16 July 2009)	Cat 2: art 4 Cat 4: art 4 Cat 6: art 4 Cat 16: arts 5, 6	Yes – official (FAO) – Link

18	Law on Renewable Energy (11 Jan 2007)	Cat 3: whole*	No – official in Mongolian (FAO) – Link
19	Law on Minerals (8 July 2006)	Cat 2: art 27.1.10 Cat 4: art 66.4 Cat 6: whole – especially arts 37–39, 40, 44, 45.1.1, 45.2 Cat 11: arts 11.1.3, 11.1.5, 57 Cat 12: arts 11.1.4, 11.1.15, 11.1.22, 13.2, 16.4, 57 Cat 16: art 41 Cat 20: arts 38, 39, 39.1.2, 39.1.3, 39.1.9/39.3, 40, 42.3, 45.2	Yes – official (FAO) – Link
20	Law on Hazardous and Toxic Chemicals (5 May 2006)	Cat 4: whole – especially arts 6, 8, 13, 15 Cat 7: arts 6.4, 8.1, 13.1 Cat 11: art 7 Cat 24: arts 19, 20	Yes – official (FAO) – Link
21	Law Amending the Environmental Protection Law (18 Nov 2005)	Cat 4: pt. IV (amendment to art 21.4) Cat 5: amendment 13 Cat 24: amendment 15	Yes – unofficial (FAO) – Link
22	Law Regulating Animals and Plants Products Traded Nationwide, Quarantine and Transportation (28 Nov 2002)	Cat 4: art 15.1.5 Cat 7: arts 8.1.5, 15.1.4, 26.2 Cat 22: arts 9.1.1, 11.1.1, 27.1 Cat 24: art 32	Yes – official in Mongolian (FAO) – Link
23	Law on the Regulation of Foreign Trade of Endangered Animal and Plant Species and Derivatives thereof (7 Nov 2002)	Cat 5: art 7 Cat 11: art 6 Cat 24: art 15	Yes – official (FAO) – Link
24	Criminal Code of Mongolia (1 Sep 2002)	Cat 1: art 202 Cat 2: art 208 Cat 4: arts 205, 206, 207 Cat 5: arts 84, 203, 208, 212, 300, 304 Cat 6: art 204.2 Cat 24: art 304	Yes – official – Link
25	Law Amending Law on Energy (4 July 2002)	Cat 3: whole	Yes – official (FAO) – Link
26	Law Amending the Law on Energy (30 Nov 2001)	Cat 3: art 1	Yes – official (FAO) – Link
27	Law on Energy (1 Feb 2001)	Cat 3: art 6 Cat 7: art 32.1.1 Cat 11: art 9.1.9	Yes – unofficial (FAO) – Link

28	Law on Licensing (1 Feb 2001)	Cat 1: art 15.6.5 Cat 3: art 15.6.1 Cat 4: arts 15.6.2*, 15.6.3 Cat 5: art 2.3	Yes – official (Ecolex) – Link
29	Law on the Import, Export and Cross-border Transport of Hazardous Waste (3 Nov 2000)	Cat 4: arts 4-6, Cat 16: arts 7, 8 Cat 22: art 2.2	Yes – official (FAO) – Link
30	Law on Fauna (5 May 2000)	Cat 5: arts 6-9 Cat 11: art 18 Cat 24: art 25	Yes – official (FAO) – Link
31	Law on the Reinvestment of Natural Resource Use Fees for the Protection of the Environment and the Restoration of Natural Resources (28 Jan 2000)	Cat 5: art 3	Yes – official (FAO) – Link
32	Law on Sanitation (7 May 1998)	Cat 1: art 6 Cat 2: arts 5, 15.2.5 Cat 4: arts 7, 10, 14.4, 15.2.5, 16.1.4, 18.1.3, 18.1.4	Yes – official (FAO) – Link
33	Law on Environmental Impact Assessment (22 Jan 1998)	Cat 5: art 1.1 Cat 6: art 6.3 Cat 12: art 7.5 Cat 14: art 5.4.8	Yes – official (FAO) – Link
34	Law on Water and Energy Monitoring (1997)	Cat 1: art 5 Cat 2: arts 5, 7 Cat 3: arts 2, 4.1.1, 5.1, 6*, 7.1 Cat 11: arts 9-15	No – official in Mongolian – Link
35	Law on the Re-regulation of the Minerals Law (1 Jul 1997)	Cat 6: whole – especially arts 5-6	Yes – official (FAO) – Link
36	Law on the Rights of the Child (1996)	Cat 6: art VII.6* Cat 7: arts V.2*, XII.1.1*, XV.1* Cat 9: arts XI.2.3*, XI.2.8* Cat 10: art X.4* Cat 12: arts IV.5*, VI.5* Cat 13: arts VIII.2*, VIII.3*, XII.1.7* Cat 14: art XXI.1* Cat 16: arts XXIV*, XXV* Cat 17: art IV.1*	Yes – unofficial (ILO) – Link
37	Law on Water and Mineral Water Use Fees (22 May 1995)	Cat 2: arts 3, 12	Yes – official (FAO) – Link

38	Law on Fees for the Use of Natural Flora (19 May 1995)	Cat 5: arts 3-4 Cat 11: art 8.4 Cat 24: art 11	Yes – official (FAO) – Link
39	Law on Fees for the Harvest of Timber and Fuel Wood (19 May 1995)	Cat 5: arts 3-5, 11 Cat 11: art 8.4 Cat 24: art 11	Yes – official (FAO) – Link
40	Law on Natural Flora (11 Apr 1995)	Cat 4: arts 7.3, 7.4 Cat 5: whole – especially arts 3-7, 9 Cat 11: arts 5, 7	Yes – official (FAO) – Link
41	Law on Forests (31 Mar 1995)	Cat 3: art 23.1 Cat 4: art 20.5 Cat 5: arts 3-4, 9, 12, 20-3 Cat 11: art 5	Yes – official (FAO) – Link
42	Environmental Protection Law (1995)	Cat 1: arts 3.1(6), 21 Cat 2: arts 3.1(3), 21 Cat 4: arts 19.2(5), 10.3, 20.1, 21, 31(3) Cat 5: whole – especially arts 1, 3-4, 6, 14.1, 21, 34 Cat 6: art 3.1(2) Cat 7: arts 4.1(1), 5.1, 11.1, 14.1(3), 19.2(6), 20.1 Cat 10: arts 4.2(2)*, 14(6), 19.2(4), 32.1(3), 34.2, 36 Cat 11: arts 10-12 Cat 12: arts 4.4,10-12 Cat 20: art 9 Cat 24: art 4.1(1)	Yes – official (FAO) – Link
43	Law on Special Protected Areas (15 Nov 1994)	Cat 5: whole – especially arts 3, 7-12, 13 Cat 11: arts 27(2), 30(9) Cat 23: art 5 Cat 24: arts 39, 43	Yes – official (FAO) – Link
44	Law on Petroleum (18 Jan 1991) Petroleum Law of the Mongolian People's Republic	Cat 6: arts 4, 6 Cat 24: art 14	Yes – official (FAO) – Link
45	Law on Subsoil (29 Nov 1989)	Cat 4: art 41.2(8) Cat 5: arts 3.4, 15, 20.1(3), 22(4), 36, 41, 53.1(5) Cat 6: whole – especially art 6.3, 28, 31-35 Cat 11: arts 7.2, 45-50 Cat 12: arts 45-50 Cat 24: arts 31(3), 58-60	Yes – official – Link

Policies, Programmes, Plans and other			
46	Sustainable Development Vision 2030 (2016)	Cat 1: arts 2.1, 2.3.3 Cat 2: art 2.3.1 Cat 3: art 2.3.2 Cat 4: art 2.1.3, 2.3 Cat 5: art 2.3.3 Cat 6: art 2.1.4 Cat 7: art 2.1.3, 2.2 Cat 8: art 2.2.2	Yes – official – Link
47	Action Program of the Government of Mongolia 2016-2020	Cat 1: arts 2.85, 4.1.6 Cat 2: arts 4.1.6, 4.2.1, 4.2.5 Cat 3: art 4.1.5 Cat 4: art 4.1.6 Cat 7: art 3.1 Cat 8: art 3.2.6* Cat 10: arts 3.2.16*, 4.1.7* Cats 11, 12: art 4.3.4 Cat 16: arts 3.4.4*, 5.3.5*	Yes – official – Link
48	National Biodiversity Action Plan (2015)	Cat 2: goal 6 Cat 3: goal 5 Cat 4: goal 6 Cat 5: whole - especially section 5 Cat 6: goals 5, 6, 7, 9, 10, 11, 12, 14 Cat 7: goal 6 Cat 10: goal 1 Cat 12: goal 1	Yes – official (FAO) – link
49	Green Development Policy (2014)	Cat 1: art 3.6.2 Cat 2: arts 3.2.9, 3.6.2 Cat 3: art 3.1 Cat 4: arts 3.1.8, 3.6.4 Cat 5: arts 3.2, 3.6.1, 3.6.3 Cat 6: arts 3.1.7-3.1.10, 3.2.2, 3.5.3 Cat 7: arts 2.1*, 3.1.9, 3.1.12, 3.2.6 Cat 8: arts 3.4.5, 3.6.1 Cat 10: art 3.5 Cat 22: arts 3.1.3, 3.1.10, 3.5.2	Yes – official – Link

50	State Minerals Policy for 2014–2025 (2014)	Cat 4: art 3.4.1 Cat 5: art 4.3.8 Cat 6: whole Cat 12: art 2.1.6 Cat 22: arts 3.3, 4.3.8	Yes – unofficial – Link
51	National Action Programme on Climate Change (NAPCC) (2011)	Cat 3: whole Cat 5: arts 3.2.11, 3.2.21 Cat 6: art 3.3.19 Cat 7: arts 2.4.2, 4.2.4.11, 5.1(2) Cat 8: art 3.5.9 Cat 10: arts 3.5.3, 4.2.4.10 Cat 12: arts 2.2.5, 3.5.1, 3.5.2, 4.2.1.3*, 4.2.3.2 Cat 13: arts 2.2.5, 2.3.1, 4.2.3.2 Cat 22: art 3.1.2	No – official in Mongolian – Link
52	Mongolia Second National Communication under the United Nations Framework Convention on Climate Change (2010)	Cat 2: sections 4.2.1(B), 4.2.1(C), Table 4.10, 9.2.4 Cat 3: ch 4, section 6.5 Cat 4: sections 4.2.4, 4.2.5, 5.1.5 Cat 6: sections 4.2.4, 5.1.1, 5.1.2, 6.5.7 Cat 7: section 2.11.2 Cat 10: section 9.1*, Project 11 (Annex II)*	Yes – official – Link
53	National Action Plan to Combat Desertification (2010)	Cat 3: arts 1.1, 3, 4.1, 9.5.4.3, 11.1.4, 14.1.5, 25 Cat 5: arts 4.1, 9.5.4.1, 9.5.4.2, 11.1.4 Cat 6: arts 1.2, 3, 9.5.3.1, 9.5.3.2, 14.7.3 Cat 10: arts 9.4.1*, 14.6.1*, 25 Cat 11: arts 9.3.3.1, 14.6.3, 16.1, 16.3 Cat 12: arts 9.4.2.1, 13.4, 13.6, 16.3 Cat 23: art 9.1.3.3	Yes – official in Mongolian – Link
54	Comprehensive National Development Strategy (2008)	Cat 1: art 6 Cat 2: art 6 Cat 3: art 6 Cat 4: arts 4.5*, 6 Cat 6: art 5.2.1.1 Cat 7: arts 4.3*, 5.1.1 Cat 8: art 4.3* Cat 11: art 6 Cat 16: art 7.1	Yes – official – Link
55	National Renewable Energy Programme 2005–2020 (2005)	Cat 1: arts 4.9, 7.4, 8.2 Cat 3: art 11.7 Cat 7: art 9.2 Cat 23: art 9.3	Yes – official – Link

56	National Programme for the Development and Protection of Children 2002–2010 (2002)	<p>Cat 1: art 27.4*</p> <p>Cat 2: arts 12.2.3*, 27.4*</p> <p>Cat 5: art 5.10*</p> <p>Cat 10: arts 12.2.6*, 27.4*</p> <p>Cat 12: art 6.4*</p> <p>Cat 13: arts 3*, 5.9*, 6.1*, 21*, 22*</p> <p>Cat 17: art 5.3*</p> <p>Cat 24: art 12.2.5*</p>	Yes – unofficial – Link (Youth Policy Org)
57	National Action Plan to Combat Desertification (1997)	<p>Cat 3: art 2.1.3</p> <p>Cat 5: art 2.1.3</p> <p>Cat 11: art 2.4.1, Annex I (Project 1)*, Annex I (Project 10)</p> <p>Cat 23: art 2.4.1</p>	Yes – official – Link
Case Law			
58	Decision No.2 (20 Feb 2008), Constitutional Court	<p>Cat 4, 6</p> <p>Summary: over 300 Mongolian citizens applied to the Constitutional Court to review whether <i>Resolution No.65</i> (20 March 2007) (which expanded the list of toxic and hazardous substances that could be transported across Mongolia’s borders) breached the constitutional right of Mongolians to a healthy and safe environment and to be protected against environmental pollution and ecological imbalance. The applicants alleged that adequate professional staff and equipment were not available at relevant border points and that large volumes of hazardous toxic chemicals (sodium cyanide, mercury) were crossing into Mongolia with insufficient monitoring.</p> <p>Held: <i>Resolution No.65</i> did not contravene the constitutional right to live in a healthy and safe environment, and there was insufficient evidence to prove that such hazardous chemical substances had been transported across Mongolian borders.</p>	Yes – official in Mongolian – Link

Notes

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

VIET NAM | Analysis Matrix | Children’s Right to a Healthy Environment

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

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

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

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

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

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

³¹⁰ Ratified on 28 February 1990.

³¹¹ Ratified on 20 December 2001.

³¹² Ratified on 20 December 2001.

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

³¹⁴ See Lan Anh Nguyen, Hao Duy Phan and Jessye Freeman, ‘International and ASEAN Law in the ASEAN 10 National Jurisdictions: The Reception of International Law in the Legal System of Vietnam’, *ASEAN Integration Through Law: The ASEAN Way in a Comparative Context* (Plenary on Rule of Law in the ASEAN Community) at <https://cil.nus.edu.sg/wp-content/uploads/2016/08/SD_ES-ASEAN-10-Vietnam-study.pdf>.

II. NATIONAL LEGAL INSTRUMENT (VIET NAM)		Responsive to which category? ³¹⁵	Official English translation available?
Constitution			
1	Constitution of the Social Republic of Viet Nam (2013)	Cat 3, 5: Art 63(2) Cat 9: Art 37(2)* Cat 12: Art 25 Cat 14: Art 37(1)* Cat 16: Art 63 NB: Art 43 provides for a general right to live in a clean environment and a general obligation to protect the environment.	Yes – official – Link
Laws			
2	Decree No 40/2019/ND-CP (2019) amending and supplementing a number of Decrees detailing and guiding the implementation of the Law on Environment Protection and other environmental and waste management laws	Cat 2: whole Cat 4: whole	No – official in Vietnamese – Link
3	Circular No 36/2018/TT-BLDTBXH guiding the collection of children’s opinions during the formulation of programs, policies, legal documents, decisions and socio-economic development master plans and plans on or related to children (2018)	Cat 13: whole	No – official in Vietnamese – Link
4	Decree No 56/2017/ND-CP detailing some articles of the Law on Children (2017)	Cat 13, 14: Chapter VI*	Yes – official – Link
5	Law on Irrigation (2017) No 08/2017/QH14	Cat 2: Art 55(7)	No – official in Vietnamese – Link
6	Law on Access to Information (2016) No 104/2016/QH13	Cat 12: Art 17(1)(i)	Yes – official – Link

³¹⁵ Categories are outlined in the Analysis Categories Table at page 47 of this Paper.

7	Law on Children (2016) No 102/2016/QH13	<p>Cat 7: Art 6(1)*, Art 12*, Art 14*, Art 43*</p> <p>Cat 9: Art 17*, Art 45*, Art 99*</p> <p>Cat 12: Art 33</p> <p>Cat 13: Art 5(4)*, Art 34*, Art 74*, Art 78*</p> <p>Cat 17: Art 5(5)*, Art 6(8)*</p> <p>NB: Art 31* provides for children's right to be protected from natural disasters and environmental pollution.</p>	Yes – official – Link
8	Law on Hydro-meteorology (2015) No 90/2015/QH13	Cat 3: Arts 33-37	Yes – official – Link
9	Law on Natural Resources and Environment of the Sea and Islands (2015) No 82/2015/QH13	<p>Cat 2: Arts 42-53</p> <p>Cat 11: Arts 73(2)(e), 6(2)(d)</p> <p>Cat 23: Art 72</p>	Yes – official (FAO) – Link
10	Criminal Code (2015)	Cat 16: Arts 123(1)(b),* 142,* 144,* 146,* 147,* 153*	No – unofficial in English (WIPO) – Link
11	Decree No 19/2015/ND-CP detailing the implementation of a number of articles of the Law on Environment Protection (2015)	<p>Cat 13: Arts 53, 54</p> <p>Cat 14: Arts 53, 54</p>	Yes – official (FAO) – Link
12	Decision 1235/QD-TTg dated 3 August 2015 approving the promotion of the children's right to participate in children's issues for the period 2016 to 2020 (2015)	Cat 13: whole*	No – official in Vietnamese – Link
13	Law on Environmental Protection (2014) No 55/2014/QH13v	<p>Cat 1: Arts 62-64</p> <p>Cat 2: Arts 49-58</p> <p>Cat 3: Art 5(4), Chapter IV (Arts 39–48)</p> <p>Cat 4: Arts 7(4)-(6) and (9), 49(2), Chapter IX (Art 85–101), Arts 139(5), 141(7)</p> <p>Cat 5: Arts 5(3), 35-36, 139(5), 141(7)</p> <p>Cat 6: Chapter III (Arts 35-38)</p> <p>Cat 10: Art 155(2)</p> <p>Cat 11: Arts 107(3)(c), 125, 129-131,* 134-138, 141(4), 143(1)(c)</p> <p>Cat 12: Arts 6(1), 21, 46, 146</p> <p>Cat 22: Arts 5(8), 47, 139(8)-(9), 152</p> <p>Cat 23: Arts 4(4), 5(11), 48, 158</p>	Yes – official (FAO) – Link

		NB: Art 4* sets out principles of environmental protection, and it sub-article 4(2) refers to harmonisation with children's rights.	
14	Circular 33/2014/TT-BLDTBXH guiding the organisation of Children's Forums at all levels (2014)	Cat 13: whole* Cat 14: whole *	No – official in Vietnamese – Link
15	Law on Water Resources (2012) No 17/2012/QH13	Cat 2: Arts 3(4), 26-27, 34 Cat 11: Art 5 Cat 12: Art 6	Yes – official (FAO) – Link
16	Decision 2139/QĐ-TTg approving the national strategy for climate change dated 5 December (2011)	Cat 3: whole Cat 7: Chapter IV, Art 7(b)	Yes – official (FAO) – Link
17	Mineral Law (2010) No 60/2010/QH12	Cat 6: Arts 12, 19, 30	Yes – official – Link
18	Law on Biodiversity (2008) No 20/2008/QH12	Cat 5: Arts 4-6 Cat 23: Art 70(3)	Yes – official – Link
19	Law on Education (2005)	Cat 10: Art 85(3)*	Yes – official – Link
Policies, Programmes, Plans and other			
20	Joint Program signed by Minister of Natural Resources and Environment and Minister of Education and Training for Environmental Protection on the environmental protection missions for the period 2019-2025 (2019)	Cat 11: whole Cat 12: whole	No – unavailable
21	Intended Nationally Determined Contribution of Viet Nam (2016) (Viet Nam's first NDC under the UNFCCC)	Cat 3: whole, page 8*	Yes – official – Link
22	National Action Plan for the Implementation of the 2030 Sustainable Development Agenda (2017) No 622/QĐ-TTg (based on the National Assembly's Resolution on the 5-year socio-economic development plan for the period of 2016-2020, Resolution 63/NQ-CP)	Cat 3: whole Cat 22: whole	Yes – official – Link

23	Implementation Plan of Paris Agreement of Viet Nam (2016) No 71/NQ-CP	Cat 3: whole Cat 22: whole Cat 23: whole	Yes – official – link
24	Government's Action Program to implement Resolution of the XII National Party Congress issued under Resolution No 64/NQ-CP (2016)	Cat 3: whole Cat 22: whole	Yes – official – Link
25	5-Year Socio-Economic Development Plan of 2016-2020 approved by Resolution No 142/2016/QH13 (2016)	Cat 2: Chapter III Art 7 Cat 3: Chapter III Art 7 Cat 7: Chapter III Art 5*	Yes – official (World Bank) – Link
26	National Green Growth Action Plan for 2014-2020 approved by Decision No 403/QD-TTg (2016)	Cat 3: whole* Cat 22: whole	No – official in Vietnamese (FAO) – Link
27	National Greenhouse Gas (GHG) Inventory System approved by Decision No 2359/QD-TTg (2015)	Cat 3: whole Cat 22: whole	No – see the summary by the Ministry of Natural resources and Environment – Link
28	Renewable Energy Development Strategy up to 2030 with a vision to 2050 approved by Decision No 2068/QD-TTg (2015)	Cat 3: whole Cat 11: whole Cat 22: whole	No – unavailable
29	National Plan of Action for children for the period 2012–2020, approved by the Prime Minister's Decision No 1555/Qd-TTg (2012)	Cat 14: Art 1(3)(b) Cat 22: Art 1(4)(d)	No – official in Vietnamese – Link
30	National Strategy on Environment Protection to 2020 with Visions to 2030 approved by Decision No 1216/QD-TTg (2012)	Cat 1: whole Cat 2: whole	Yes – official – Link
31	Viet Nam Sustainable Development Strategy for 2011-2020 approved by Decision No 432/QD-TTg (2012)	Cat 1: whole Cat 2: whole Cat 3: whole Cat 4: whole Cat 6: whole Cat 10: whole Cat 12: whole	Yes – official – Link
34	Master plan on biotechnology development and application in Viet Nam up to 2020, approved by Decision No 14/2008/QD-TTg (2008)	Cat 22: Chapter II Art 2(c)	Yes – official (FAO) – Link

35	National Action Plan on Biodiversity up to 2010 and orientations towards 2020 for implementation of the Convention on Biological Diversity and the Cartagena Protocol on Biosafety (2007)	Cat 5: Chapter III Art 3(b) Cat 14: Chapter III Art 3(b)	Yes – official (FAO) – Link
36	Viet Nam National Implementation Plan for Stockholm Convention on Persistent Organic Pollutants (2006)	Cat 4: whole Cat 12: whole Cat 22: whole	Yes – official (UN) – Link
Case Law			
37	Formosa Plastics Group litigation (2016)	Cat 2: whole Cat 4: whole Cat 24: whole Summary: the Formosa Plastics Group was fined US\$500 million in 2016 for extensive toxic waste discharge into the ocean by one of its subsidiary corporations operating in Viet Nam, which killed large quantities of fish and other sea life.	Official case law inaccessible; information sourced from news and other media. ³¹⁶

Notes

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

³¹⁶ See 'Vietnamese fishing communities seek justice in lawsuit against Taiwanese corporation', *ASEAN Today* (News article, 25 June 2019) <<https://www.aseantoday.com/2019/06/vietnamese-fishing-communities-seek-justice-in-lawsuit-against-taiwanese-corporation/>>; 'Taipei Court Dismisses Lawsuit Filed by 8,000 Vietnam Marine Disaster Victims', *The News Lens*, (News article, 31 October 2019) <<https://international.thenewslens.com/article/126835>>.

For every child

Whoever she is.

Wherever he lives.

Every child deserves a childhood.

A future.

A fair chance.

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For each and every child.

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Reaching the hardest to reach.

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It's why we stay to the end.

And never give up.



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