



Climate in-justice for children:

How climate crisis affects access to justice and children's rights

4 snapshots of action
Advocacy Brief



This advocacy brief builds upon the activities of the Committee on the Rights of the Child (CRC) concerning the 2023 general comment No. 26 on children’s rights and the environment with a special focus on climate change, providing a foundation to place children at the forefront of efforts to address climate change and further our collective commitment to ensuring a sustainable future for all children. Particularly, aiming at emphasizing and operationalizing Section D ‘Access to Justice & Remedies’ (paragraphs 82 – 90) of the general comment No. 26.

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We are immensely thankful to climate activist Catarina and Michael Frost for their significant role in crafting the forewords for this advocacy brief.

Citation:

Terre des hommes Foundation Lausanne, 2023. “Climate in-justice for children: How climate crisis affects access to justice and children’s rights”.

Acknowledgements:

The authors are grateful to the core team partners of the Child Justice Advisory Group (CJAG) who generously gave their time directing the team to key ideas and references; and to those who commented on earlier drafts of the paper.

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Executive summary

The Global Initiative on Justice with Children, launched as a collaborative effort by a consortium of organizations and hosted under the Terre des hommes foundation (Tdh) Access to Justice programme, urges policy and decision makers at national and international levels, as well as NGOs, child rights defenders, jurists, academics, and the general public, to take action in response to the impact of environmental degradation and climate change on children.

This advocacy brief is specifically designed to raise awareness among stakeholders about the pressing need to **safeguard children's rights to access justice in the face of the climate crisis**.

Recent studies have unequivocally demonstrated that climate change poses a significant threat to children's fundamental rights. Of utmost concern is their **right to fair access to justice and child-friendly justice systems**. This essential right ensures that children can effectively voice their concerns and hold relevant actors accountable for actions that have contributed to environmental degradation.

The magnitude and complexity of climate change demand a comprehensive and multi-faceted approach.

It is crucial to recognize that **children are disproportionately affected by environmental degradation and climate change**, especially those in the justice system. Children in the justice system face compounded challenges as climate change exacerbates environmental disasters, economic disparities, and social upheaval, further jeopardizing their rights and overall well-being. Ensuring their rights to justice are protected is not only a moral imperative but also a critical aspect of building a sustainable and just future.

The advocacy brief focuses on **two key areas** of concern that the Global Initiative is actively addressing:

1. Children's access to justice in the context of the climate crisis

This section delves into the specific challenges children encounter when seeking justice in environmental issues, particularly those related to climate change. It underscores the importance of ensuring equitable opportunities for children to seek remedies and hold governments and other stakeholders accountable for actions that contribute to environmental degradation.

The document emphasizes the role of **strategic climate litigation** in overcoming barriers that impede children from asserting their rights. It addresses challenges such as insufficient legal representation, legal standing, burdens of proof, financial constraints, prolonged legal proceedings, and formidable adversaries, including States and businesses.

Additionally, this section addresses **the child's right to freedom of association and peaceful assembly**, enabling them to advocate for their rights amidst the consequences of climate disruptions. States are obligated to create an enabling environment, both online and offline, that allows children to exercise this right. It is crucial to prevent any form of reprimand, assault, or silencing of children who express their views on these matters. The role of **human rights defenders** is particularly emphasized in these situations.

2. The impact of the climate crisis on child justice systems

This section explores how the climate crisis affects child justice systems worldwide. It delves into the complex interplay between climate change and the functioning of **the administration of justice** that deals with issues involving children in contact with the law. It underscores the need to construct disaster-resistant child and youth justice infrastructure.

It also stresses the importance of developing proactive **strategies for the prevention of child and youth crime** that take into account the specific needs and rights of children within these systems. Moreover, the participation of children in decision-making processes is crucial, as their perspectives can inform the **social and urban changes** needed to address challenges related to environmental degradation and climate change such as global warming, sea level rise, floods, drought, and excessive heat.

By providing valuable insights into the specific challenges that children face in accessing justice linked with environmental degradation and climate change, this advocacy brief aims to **equip policymakers, decision makers, and stakeholders with practical solutions** to address these pressing issues. It serves as a resource that can **inform policy formulation, decision-making processes, and inspire concrete actions on the ground.**

This advocacy brief is as a **clarion call to transform the current landscape and, as such, it formulates 10 precise recommendations to ensure that children can access Climate Justice.** By collectively working towards these recommendations and taking decisive action, stakeholders can create an inclusive and equitable future where children are active participants in addressing the challenges of environmental degradation and climate change.

Terre des hommes foundation (Tdh) is the leading Swiss organisation for children's aid. Since 1960, Tdh has helped build a better future for deprived children and their communities, making an impact with innovative and sustainable solutions. Active in almost 40 countries, Tdh works with local and international partners to develop and implement field projects which improve the daily lives of over four million children and members of their communities, in the domains of health, protection and humanitarian aid. This engagement is financed by individual and institutional support, with administrative costs kept to a minimum.¹

The Global Initiative on Justice With Children (JWC) is an initiative that addresses the most current issues related to the rights of children and adolescents in contact and/or conflict with justice systems.

It is led by the Terre des hommes Foundation, in partnership with Penal Reform International (PRI), and the International Association of Youth and Family Judges and Magistrates (IAYFJM). The Global initiative connects professionals from around the world and serves as a global landmark through World Congresses, as well as regional and national advisory meetings.

The Global Initiative's priorities for the future are guided by the insights gleaned from discussions held during the 2021 World Congress on Justice With Children. These conversations involved researchers, academics, children's rights practitioners, decision-makers, civil society members, and children with personal experiences. These priorities encompass: Digital justice, Justice in times of crises, Community empowerment, Neurosciences and child justice and Ending child detention. Climate justice emerged as a clear top priority!

The Global Initiative on Justice with Children focuses on studying the linkages between climate change and its impact on child justice systems, using the concept of climate justice as a lens to ensure that human rights, especially those of children, are respected and protected.

This involves addressing two key questions:

- I. Children's access to justice in environmental cases, and
- II. How the climate crisis affects child justice systems.

By addressing these questions, the Global Initiative on Justice with Children strives to enhance the understanding and response to the unique challenges faced by children in the context of climate change.

¹ More information can be found here: <https://www.tdh.ch/en>

Foreword

Greetings to all who hope and act towards such feeling,

I'm Catarina – a climate activist, surfer, and student from Brazil. I would like to share insights on an urgent issue at the crossroads of climate and justice. As a firm believer in the power of everyday actions, I'm driven to cultivate positive change in our world. This belief fuels my involvement in various organizations, including Heirs to Our Oceans. This unique group, built by youth for youth, equips young leaders to grasp crises like the climate, water, and food challenges, empowering them to create solutions.

My personal initiative, Eco Club Sustentare, seeks to spark change through an online platform, while also directly working with a community in need from Bahia, Brazil. This platform channels environmental knowledge from a child's perspective, fostering discussions on sustainability and children's rights. It's not just about sharing information; it's about reaching marginalized communities, like the underserved areas in Brazil where children face violence daily. My goal is to co-create solutions, empowering these communities towards sustainable growth.

The fight for nature also resonates deeply. I've championed the protection of an Atlantic Forest called Vale Encantado in my city, Salvador, understanding that children have a right to nature for generations ahead.

I am very passionate about advocating for children's rights, and a space where I actively act towards that passion is through the Child Rights Connect Organization, where I am part of the Child Advisory group together with other children from all over the world.

In 2019, with fifteen other youth, I took a bold step by filing a petition before the Committee on the Rights of the Child. Our message was clear: climate inaction violated our rights. This effort continues, a reminder that change requires persistence. I urge you to reflect on your daily choices, comprehending that our actions have power, and to support change through legislation and accountability.

As you delve into this paper, may it resonate as a call to action. Let's work together to ensure climate justice for children becomes a reality.

With hope and determination,

Catarina

Child global activist and surfer from Brazil
Child Right Connect's Child Advisory Board Member



Foreword

By Michel Forst, UN Special Rapporteur on Environmental Defenders under the Aarhus Convention.

As we face a triple planetary crisis of climate change, pollution and biodiversity, there is a pressing need for action and advocacy to ensure a fair and sustainable future for the generations to come. In my role as UN Special Rapporteur on environmental defenders under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention), which is open to accession by any UN Member State, I see firsthand the obstacles and reprisals experienced by environmental defenders, including children and youth, urgently seeking to have their voices heard to have effective action taken to address the climate emergency. I also witness the growing mobilization of children and youth on environmental matters across Parties to the Aarhus Convention and indeed globally. Environmental activism by children is a powerful global force for environmental protection that brings their unique perspectives and observations to enhance the quality of environmental decision-making at all levels.

Indeed, article 1 of the Aarhus Convention specifically requires Parties to the Convention to guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in order to protect the right of every person of present and future generations to live in an environment adequate to his or her health and well-being. As reflected in the present policy paper as well as the Aarhus Convention itself, the procedural rights of access to information, public participation in decision-making and access to justice are key elements to ensure the full enjoyment of a child's right to a clean, healthy and sustainable environment. Unfortunately, children continue to face significant legal, financial and social barriers in their exercise of these rights.

In this context, it is important to highlight article 3(8) of the Aarhus Convention, which forms the legal basis of my mandate as Special Rapporteur on environmental defenders. Article 3(8) requires each Party to the Convention to ensure that persons exercising their rights under the Convention are not penalized, persecuted or harassed in any way for their involvement. This includes child and youth environmental defenders. In my mandate, I have seen that, even as children push for greater action to protect the environment, they oftentimes remain excluded from environmental decision-making and from the public space. Moreover, in seeking to exercise their rights, they are particularly vulnerable to risks of intimidation and repression.

I cannot emphasize enough the pivotal role played by children in raising awareness and calling for action in relation to environmental harm that puts at risk their future in a clean, healthy and sustainable environment. Their voices must be heard, whether in the context of meaningful public participation procedures or in the course of peaceful protest, and due account must be taken of their views by decision-makers. Likewise, children must be given access to justice to challenge decisions relating to environmental matters and to proactively engage in strategic climate litigation. Critically, children must be protected from intimidation and repression for seeking to exercise these rights. It is therefore critical that States respect, protect and fulfil children's rights, including their procedural rights and rights to freedoms of expression, association and peaceful assembly in relation to the environment and that States create the necessary enabling and safe civic spaces within which children can make their voices heard. In today's globalized world, this includes both physical and online spaces.

I would also like to emphasize the important role played by civil society in pushing for greater respect of children's rights in the context of the global climate and environmental crises. Civil society organizations are critical to supporting children in their efforts to have their voices heard, whether in international forums, during peaceful protest or before judicial or non-judicial complaints bodies. Unfortunately, in my mandate as Special Rapporteur on environmental defenders, I see all too often that civil society organizations themselves face harassment and intimidation for seeking to exercise their right to a clean, healthy and sustainable environment. States must ensure that those acting on behalf of or in support of children are also protected and are provided with a safe and enabling environment to exercise their rights without fear of reprisals. In this way, they can continue to serve the children who need their support so urgently.

In light of the above, the present policy paper is a timely and valuable contribution to global efforts to safeguard children's right to access justice in the face of the rapidly evolving climate crisis and I commend the authors for their thoughtful and important work.

Michel Forst

UN Special Rapporteur on environmental defenders
under the Aarhus Convention



Introduction

Recent studies demonstrate that climate change poses a significant threat to children's fundamental rights, including their right to fair access to justice. The rights to justice and to a fair trial are essential to ensure that children have a voice and can hold governments and other actors accountable for their actions that may have contributed to environmental degradation.

Climate justice aims to address the ethical and practical implications of climate change. As a field of research and activism, it acknowledges that climate change is not merely an environmental issue but also an ethical, legal, and political issue that has significant implications for justice, environmental justice, and social justice. Climate justice focuses on equality, human rights, collective rights, and historical responsibilities for climate change. It seeks to ensure that those who are most affected by climate change, such as children and vulnerable and marginalised communities, are included in decision making processes to curb climate change. Climate justice actions include legal actions taken in various parts of the world, which are helping to hold governments and corporations accountable for their actions that have contributed to climate change. By upholding the right for children to fair access to justice, these actions can protect children's rights to justice. It is essential to ensure that children's rights are respected and upheld in the pursuit of climate justice.

Tdh is taking an important step towards addressing the impact of climate change on children by exploring the issue from the children's perspective. The Global Initiative on Justice With Children aims to investigate how access to justice for children is affected by the climate crisis, and identify key strategic actions that can be taken to activate children's rights and bring about real change.

Policy and decision makers at the national and international levels, as well as NGOs, child rights defenders, jurists, academics, and the general public, all have a role to play in addressing the impact of climate change on children. This advocacy brief is aimed at these stakeholders to raise awareness about the urgent need to protect children's rights to justice in the context of the climate crisis. By providing insights into the specific challenges that children face in accessing justice, and offering practical solutions, this brief can help inform policy and decision-making processes, as well as inspire action on the ground. Climate change is a complex issue that requires a multifaceted approach. It is essential to recognize that children are among the most affected to its impacts, and that their rights to justice must be protected. By working together and taking decisive action, we can ensure that children are not left behind in the fight against climate change.

This advocacy brief is structured around four pillars of Climate Justice For and With Children that Tdh works on:

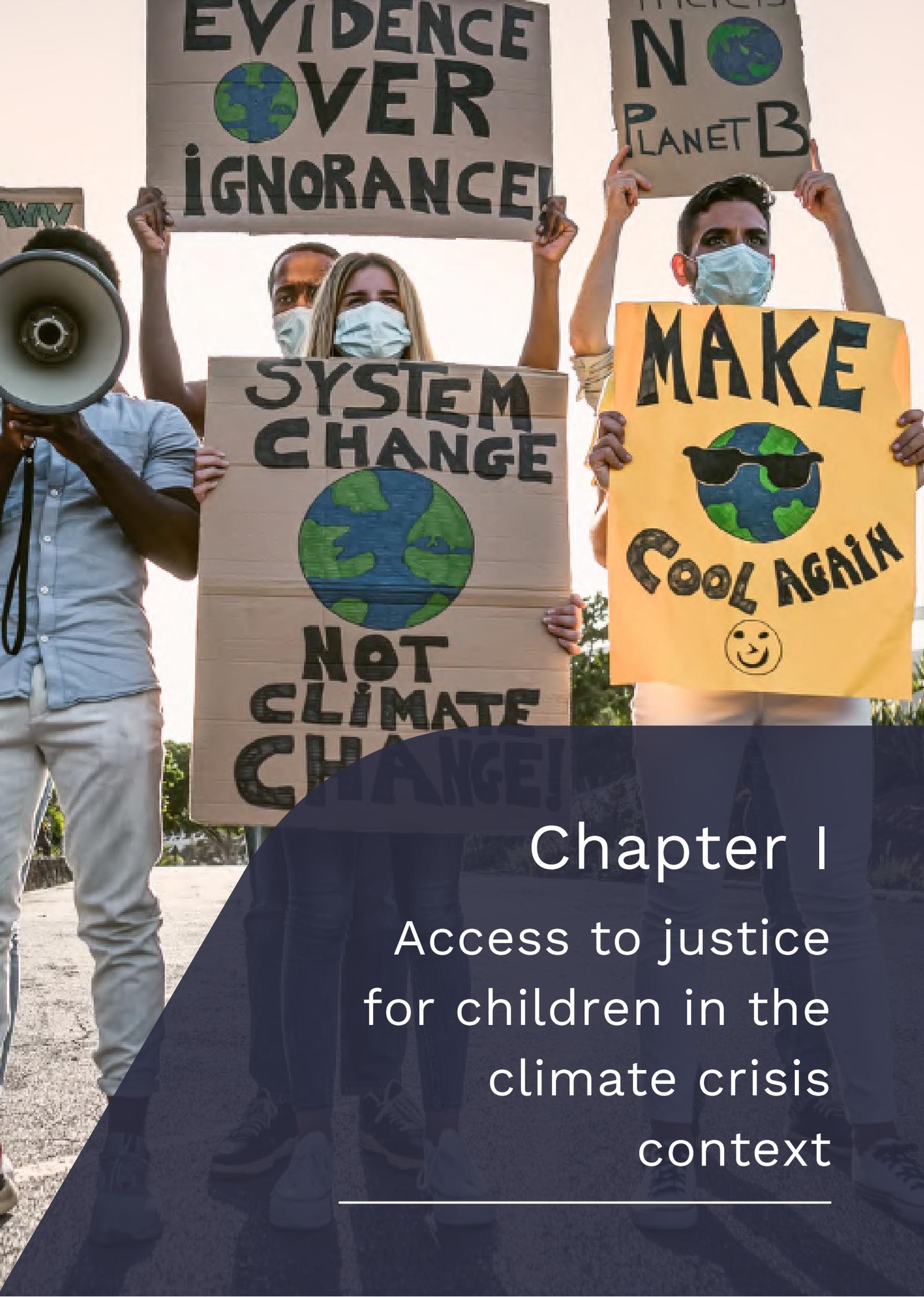
1. Child rights strategic climate litigation (CRSL)
2. The right to assembly and freedom of speech of children
3. Administration of justice in the climate crisis
4. Societal and urbanistic change & children and youth crime prevention mechanisms

The above priorities of work around Climate Justice For and With Children are also in line with the work of the UN Committee on the Rights of the Child (CRC Committee), and its General Comment No. 26: *"Children's rights and the environment with a special focus on climate change"*.

4 snapshots of action

Advocacy Brief





Chapter I

Access to justice
for children in the
climate crisis
context

The Convention on the Rights of the Child (UNCRC) provides that States are responsible for children's access to justice and remedies (article 4). Moreover, article 12 (2) states that the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting them (directly or indirectly) in accordance with the procedural rules of national law. In this context, States are obliged to ensure that children have access to timely, appropriate and effective judicial and non-judicial mechanisms and bodies, including national human rights institutions, in the event of violations of their rights related to environmental damage. This should be made available to children, who are themselves often the initiators of actions that are taken against States or businesses in environmental and climate change cases. Moreover, complaints mechanisms should be put in place and should be free, safe, confidential, timely, child-friendly and accessible. States should consider providing for collective complaints, such as class actions and public interest litigation, and extending the statute of limitations for violations of children's rights due to environmental damage.

However, there are many barriers to children's access to justice. We firstly think of the limited legal and financial capacity of children to pursue remedies or the excessive length of proceedings. In environmental cases the burden of proof, the complexity of cases - often cross-border - and the restrictive requirements that children must be directly affected by or have a sufficient interest in the environmental harm are all obstacles. Children often have limited means to assert their rights in the context of the environment degradation and climate change.

A. Snapshot on Strategic climate litigation

Definition

There is no commonly agreed-upon definition of strategic litigation.² However, a recent study dedicated to child rights strategic litigation defines it as "litigation that seeks to bring about positive legal and/or social change in terms of children's enjoyment of their rights."³

Strategic climate litigation in this context consists of using, in a very deliberate and considered manner, all available legal instruments, mechanisms, procedures and actions, at national, regional and international level, with the aim of persuading or obliging the State(s) to better respect children rights in the context of the environment and climate change.⁴

Children can be individually or collectively affected by the global environmental risks or harm. They must therefore be able to demand urgent and decisive actions or omissions to States and/or businesses to redress violations of their various rights.⁵

Strategic climate litigation is an important tool for children to access justice in their effort to advocate against the adverse effects of climate change, specifically how it affects them both currently and in the future. Ideally, strategic climate litigation should be part of a broader child-led advocacy strategy that seeks to ensure social change.⁶



² Helen Duffy, 'Strategic Human Rights Litigation' (Hart, 2018), 3

³ A. Nolan, A. Skelton and K. Ozah, 'Advancing Child Rights-Consistent Strategic Litigation Practice' (ACRISL, 2022)

⁴ DCI-Belgium, Practical Guide for lawyers: How to a child in conflict with the law?, p. 97 et s.

⁵ Ibid., p. 97 et s.

⁶ Ibid., p. 97 et s.

Context

One of the first questions that arises is who are the plaintiffs, litigants and/or litigators in climate-related actions? Strategic climate litigation is usually undertaken by specialist non-governmental organisations or practitioners/lawyers, who defend children and young people in climate-related cases. However, cases led by children or young people themselves do exist, but they are still relatively rare, largely because of the considerable difficulties that children and young people face in accessing the justice system.⁷

The question of the age for legal standing is particularly important, as well as the legal conditions for children to bring forth cases in different countries or through different mechanisms. Nevertheless, the active involvement of children and young people in strategic climate litigation can contribute significantly to the realisation of children's procedural environmental rights, by elevating the role of this demographic group as key actors in climate solutions and implementation. This is true both directly for plaintiffs and indirectly for the youth climate movement.⁸

Beyond the question of the legal standing of the child, we also need to consider the question of caretaker's consent for children who wish to take action, as well as the length, complexity, and cost of proceedings. Other factors include the complexity, extraterritorial, and abstract nature of environmental cases, and the burden of proof that normally falls on plaintiffs. These challenges make it exceedingly difficult for children to initiate complaints against transboundary business actions that harm the environment.

Another significant hurdle that children from remote areas, often the most affected by climate change, face is the consideration of physical proximity to the courts and access to accurate and real information. These young individuals may find it nearly impossible to physically reach the courts due to their geographical isolation. Moreover, the lack of close proximity to legal institutions can lead to a lack of awareness about their rights and the option to seek justice, further compounding the challenges they encounter in addressing the environmental impacts that disproportionately affect their communities.

The list is long but not exhaustive, and it allows us to explore possible solutions or inspiring examples to overcome these obstacles and in this way empower children to take action.

⁷ Donger, E. (2022). Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization. *Transnational Environmental Law*, 11(2), 263-289.

⁸ Donger, E. (2022). Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization. *Transnational Environmental Law*, 11(2), 263-289.

International norms

The UNCRC provides for children to claim their environmental rights through access to justice and remedies (article 4: appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention), and there are other specific rights of the child - in relation to the environment - that are important to consider when engaging in strategic climate litigation practice. These include non-discrimination (article 2), the best interests of the child (article 3), the right to be heard (article 12 (1) and 12 (2)), the rights to freedom of expression, association and peaceful assembly (articles 13 and 15), the right to privacy (article 16), the right to information (article 17) and the right to education (articles 28 & 29 (1 e)).

Strategic litigation, at international, regional or national level, advances respect for children's rights in many forums, bodies and mechanisms, and takes different forms. The treaties, protocols and texts governing the operation of these bodies will govern how the process is conducted.

For example, at the international level,

- The International Court of Justice (ICJ) is the principal judicial organ of the United Nations and hears disputes between states. It plays a crucial role in interpreting and applying international law, including cases related to children's rights;⁹
- The Committee on the Rights of the Child (CRC Committee) is a UN treaty body responsible for monitoring the implementation of the UNCRC. It receives and reviews reports from states and can engage in strategic litigation by issuing recommendations and opinions on cases related to children's rights. The Optional Protocol (OP3) to the UNCRC on a Communications Procedure allows children or any other individual or group of individuals to lodge a complaint to the CRC Committee alleging that their rights under the Convention have been violated (article 5, OP3 UNCRC). An illustrative example showcasing children's participation facilitated by OP3 is the Saachi et al.v. Argentina¹⁰ case.

At the regional level,

- The European Court of Human Rights (ECtHR) is the supranational court that oversees the European Convention on Human Rights. It hears cases concerning human rights violations, including those affecting children, and its judgments can have significant impacts on the protection of children's rights across Europe. A compelling illustration of children and young people taking the forefront in climate action within the context of the ECtHR is evident in the case of Duarte Agostinho and Others v. Portugal, alongside 32 other States. This landmark case vividly underscores the proactive role that youthful activists are assuming in advocating for climate justice.

⁹ Netherlands v. Sweden. (1958). Application of the Convention of 1902 Governing the Guardianship of Infants. International Court of Justice. Judgment of 28 November 1958. <https://www.icj-cij.org/case/33>

¹⁰ Saachi et al.v. Argentina case involved a group of children and their supporters who filed a complaint with the CRC Committee under the UNCRC's Optional Protocol (3), alleging that Argentina alongside other nations, had collectively infringed upon their rights by neglecting to address climate change in a sufficient manner. See Sacchi et al. v. Argentina, Brazil, France, Germany and Turkey, 104/2019-Argentina, 105/2019-Brazil, 106/2019-France, 107/2019-Germany, and 108/2019-Turkey United (2019) United Nations Committee on the Rights of the Child.

¹¹ Duarte Agostinho and Others v. Portugal and Others (communicated case) - 39371/20 ECHR <https://hudoc.echr.coe.int/fre?i=002-13055>

- The Inter-American Court of Human Rights (IACtHR) is an autonomous judicial body of the Organization of American States (OAS), responsible for interpreting and applying the American Convention on Human Rights. It handles cases related to human rights violations in the Americas, including issues affecting the rights of children. The Inter-American Commission on Human Rights is an autonomous and principal organ of the Organization of American States (OAS) tasked with promoting and protecting human rights in the Americas. On February 4, 2021, Haitian children submitted a petition to the Inter-American Commission on Human Rights, highlighting human rights violations linked to improper waste disposal in their residential area, Cité Soleil. The petition outlines the hazardous impact of toxic waste from Port-Au-Prince on the health of the local population, particularly children, discusses the exacerbating effects of climate change, and alleges violations of various articles of the American Convention on Human Rights, including the Rights of the Child, Dignity, Healthy Environment, and Judicial Protection, with the Commission expected to determine whether it has jurisdiction over the case.¹²
- The African Commission on Human and Peoples' Rights (ACHPR) and the African Court on Human and Peoples' Rights (AfCHPR) are important mechanisms for strategic litigation concerning children's rights in Africa. Furthermore, the African Committee of Experts on the Rights and Welfare of the Child possesses an individual communications mechanism closely resembling that of the UN Committee on the Rights of the Child. Consequently, it is equipped to accept strategic litigation cases concerning children's rights, as outlined in its founding charter.

And at national level, constitutional Courts or similar judicial bodies and National Human Rights Commissions or Institutions can also contribute to strategic litigation for the promotion and protection of children's rights.

Good practices and policy reform

Legal standing¹³:

In many countries, legal representation is available to children under the age of 18 who wish to bring a legal action before a court. This involves the appointment of a legal representative (parent, guardian, NGO or lawyer) to act on behalf of the child and ensure that their rights and interests are protected. In some cases, children may also have the right to initiate legal proceedings independently, depending on the laws and regulations in their country. For instance, the South African Children's Act bestows the right to commence legal proceedings upon 'every child'.¹⁴ In contrast, in some other jurisdictions, children may exercise this right either when they reach a specific age or on a case-by-case basis, determined by their perceived capacity to comprehend legal proceedings.¹⁵

¹² Six children of cité soleil, haiti and sakala community center for peaceful ALTERNATIVES (2021) [Petition Submitted To The Inter-American Commission On Human Rights]. https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210204_13174_petition.pdf

¹³ "Legal standing" refers to the right of an individual or entity to bring a legal action before a court. In other words, it is the legal right to sue or be sued in a court of law. To have legal standing, a person or organization must have a direct and tangible interest in the outcome of the legal action, such as a personal injury or a financial loss. In justice actions, legal standing is important because it determines who has the right to bring a case before a court and seek a remedy for a violation of their rights or interests.

¹⁴ Section 14 of the Children's Act; Boezaart, 2009: 22–23 (with reference to the common law starting point that an infant has no capacity to litigate: 22) and 34–35).

¹⁵ UN High Commissioner, 2013: para. 37 with reference to examples from the Russian Federation; see also Joint report, 2012: 12 and Fortin, 2009: 114)

Some State parties to the UNCRC have explicitly or implicitly empowered children to bring cases to enforce their environmental rights including the Philippines¹⁶, Colombia¹⁷, Peru¹⁸, South Korea¹⁹ and Costa Rica²⁰. In most of these actions the children involved were represented by their parents.

In February 2022, 12 children filed a complaint that took the Austrian Climate Protection Law to the Constitutional Court, challenging the Austrian Climate Protection Law. They were represented by a climate lawyer and argued that their government's inaction violates children's rights. Children's rights were incorporated into the Constitution in 2011, and this lawsuit shows the importance of that incorporation.²¹

On March 13, 2020, in the United States, a legal action was initiated by sixteen Montana youth against the State of Montana and various state agencies.²² The crux of the complaint centred on the constitutionality of Montana's energy framework, which relies predominantly on fossil fuels. The plaintiffs contended that this energy system infringed upon their constitutional rights, as outlined in multiple sections of the Montana Constitution and the Public Trust Doctrine. To be more specific, the legal challenge targeted specific provisions within Montana's State Energy Policy Act, a particular clause within the Montana Environmental Policy Act (MEPA) that obstructed the consideration of greenhouse gas emissions and climate change repercussions, and the state's activities aimed at perpetuating a fossil fuel-oriented energy system on the basis of these aforementioned legal provisions. The court determined that Montana had violated the constitutional rights of these young individuals concerning their entitlement to a clean environment by endorsing fossil fuel-based practices and disregarding the issue of climate change. The ruling underscored several pivotal aspects, including the adverse effects stemming from greenhouse gas emissions, the disproportionate impact borne by children and youth, and Montana's considerable contributions to the broader global climate change phenomenon. Moreover, the court emphasised the government's obligation to safeguard the environment and the health of the younger population by restraining detrimental fossil fuel-related activities based on empirical scientific evidence.

Specialist non-governmental organisations, whether in the field of children's rights or environmental protection, should also be able to initiate the necessary procedures to enforce children's rights in the environmental or climate change context, as this practice has been adopted by around half of States parties to the Convention.²³

¹⁶ See CRIN, Children's Access to Justice for Environmental Rights; Philippines, March 2022. Available at: <https://home.crin.org/a2j-philippines>.

¹⁷ Future Generations v. Ministry of the Environment and Others, available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/future-generation-v-ministry-environment-others/>.

¹⁸ Álvarez et al v. Peru, available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/alvarez-et-al-v-peru>.

¹⁹ Do-Hyun Kim et al. v. South Korea, available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/kim-yujin-et-al-v-south-korea/>

²⁰ See CRIN, Children's Access to Justice for Environmental Rights: Costa Rica, forthcoming.

²¹ <https://fridaysforfuture.at/klimaklage>

²² Held v. State, No. CDV-2020-307, (Mont. 1st Dist. Ct. Aug. 4, 2021)

²³ See CRIN, Rights, Remedies and Representation: A global report on access to justice for children, 2016, p. 24.

While parents, lawyers, and organizations can represent children in legal proceedings, it is essential that they have the expertise and understanding to effectively represent children's interests in such cases. Several considerations need to be taken into account in these different scenarios. What about children who would like to act alone? How can children find a good lawyer, NGO or supportive and competent adult? Relying solely on adults can exclude children from the process and limit their participation in justice mechanisms. It is therefore crucial to strike a balance between qualified representation and meaningful participation for children.

In addition to legal standing, there are three barriers that States should particularly address in order to ensure equal access to justice for children in the context of environmental legal action:

- Burden of proof:

In environmental legal actions, the burden of proof refers to the responsibility of the plaintiff (in our brief, a child or children) to provide sufficient evidence to prove their case.

In most legal systems, the burden of proof falls on the plaintiff, who must prove the allegations against the defendant (State, organisation or business). This means that the child must provide enough evidence to show that the defendant is responsible for the environmental harm alleged. The burden of proof can be particularly challenging for plaintiffs in environmental cases. This is because environmental harm can be difficult to prove, and the evidence needed to establish a causal link between the defendant's actions and the harm can be complex and costly to obtain. In addition, defendants in environmental cases may have more resources and access to information than the plaintiffs, which can make it even harder for plaintiffs to meet the burden of proof.

Interestingly, there have been efforts to recalibrate the burden of proof in environmental cases to ensure greater access to justice for affected individuals or communities, as already recommended by the Special Rapporteur on Toxics and Human Rights in a thematic report in 2017.²⁴ For example, some legal systems have shifted the burden of proof to the defendant in certain circumstances, such as when the harm is widespread or when the defendant has greater access to information. This can help to promote access to an effective remedy and avoid impunity for environmental harm. For example, in Brazil, the Superior Court of Justice held that the burden of proof is reversed in environmental cases where certain prerequisites are demonstrated.²⁵ In Thailand, courts have started interpreting the law around burden of proof in a way that promotes environmental protection; the Supreme Court recently shifted the burden of proof to the defendant in a water pollution claim.²⁶

- Limitation periods:

Strict time limits on when a case must be submitted can present a serious barrier to children accessing remedies, particularly for young children who may not be able to approach the courts until they have reached the age of majority in the case they were not able to find a proper legal representative. Limitation periods also bar those children who may not have been aware or known about the option to access courts in order to seek climate justice. Some States have sought to remedy this by not imposing strict time limits in certain cases. For example, in Slovakia there is no statute of limitations on civil claims for harm to a person's health.²⁷

²⁴ Special Rapporteur on Toxics and Human Rights, "Report on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes", 20 July 2021, §106 and §112 (h).

²⁵ CRIN, "Children's Access to Environmental Justice, country report Brazil", March 2022

²⁶ CRIN, "Children's Access to Environmental Justice, country report Thailand", April 2022.

²⁷ CRIN, "Children's Access to Environmental Justice, country report Slovakia", to be published soon.

In Brazil, the federal law does not provide for specific time bars regarding criminal or administrative liability in environmental claims and courts have recognised that there are no limitation periods regarding the civil remediation of environmental damage.²⁸ Parallel social justice movement efforts have eliminated statutes of limitations for trafficking and child sexual assault cases to allow children to grow to a place where they can bring suits to hold offenders accountable. This is a principle that, if applied in the environmental context, could prove to be transformational.²⁹

- Financial barriers:

When a child wants to initiate environmental legal proceedings, the costs can be significant and constitute a financial barrier to action. There are a number of mechanisms that States can adopt to recognise and mitigate these financial barriers: Free legal aid, advice and representation for children in cases of violation of children's rights in the environmental context.

Key strategic actions to be put in place

- Follow the example of countries like South Africa and the Philippines³⁰ that allow children to take action themselves (**legal standing for children**) and make the necessary legal or policy reforms to make this possible;
- Provide for **standing for specialist non-governmental organisations**, whether in the field of children's rights or environmental protection, to bring suits in their own name where they allege a violation of the rights of children that falls within the expertise of that organisation can also be a highly effective means of protecting the rights of children in this context. This is a measure that has been adopted by around half of States parties to the Convention.
- Recalibrate **the burden of proof** towards those with greater access to accurate and real information to avoid impunity and promote access to an effective remedy for victims.
- Limit **costs of litigation for children in environmental matters** in order to prevent them from paying huge amounts of money if they lose the case against the State(s) and **explore the provision of legal aid specifically for children**, for example, by considering the exclusion of parental income in determining eligibility.³¹
- Provide for **free legal aid, child-friendly advice and representation for children** in cases of violation of children's rights in the environmental context.
- Make **complaint mechanisms accessible and child-friendly** and **court procedures available to children** also contribute substantially to improving their access to justice.³²
- Establish **effective, accessible** appeal and complaint procedures with expertise relevant to children's rights to protect and address rights violations related to climate justice (e.g. regulatory bodies governing any aspect of environmental protection – also those set up by businesses and third parties – or more specifically children and youth climate activism).

²⁸ CRIN, "Children's Access to Environmental Justice, Country report Brazil", March 2022, and more information on the Brazilian federal law.

²⁹ <https://docs.house.gov/billsthisweek/20220912/BILLS-117s3103-SUS.pdf>

³⁰ In the Philippines, children have successfully initiated environmental lawsuits within the judicial system, harnessing the nation's robust laws to enforce action to protect the environment. See Child Rights International Network (CRIN). (2022). Children's access to justice for environmental rights- Philippines

<https://static1.squarespace.com/static/5afadb22e17ba3eddf90c02f/t/624bf7bd71ddea10d9c6148f/1649145792605/Childrens-Access-to-Justice-for-Environmental-Rights-Report-Philippines.pdf>

³¹ CRIN, Global report on access to justice for children, p. 30.

³² These mechanisms for addressing environmental issues can significantly differ among countries, ranging from industry-specific regulatory bodies to formal justice systems.

- Ensure **child-friendly information and the right to education**: In many respects, the provision of child-friendly information to enable children to exercise their rights and access justice mechanisms is the same as for other rights. However, in the context of climate change, where children and young people have been active campaigners and been at the forefront of climate justice movements, there is an increased need to ensure that children are educated about and informed as to how to exercise their rights to protest and to access complaints procedures if their rights are violated while they are protesting.
- Promote visits to remote communities where children are experiencing violations of their rights due to the adverse effects of climate change and inform them about their rights and the existing mechanisms and institutions where they can file complaints regarding this matter.
- Develop and implement **specific remedies** that address violations of children's rights in the context of environmental harm and climate change, for example, the remediation of contaminated sites may be a necessary remedy in cases related to pollution or the release of toxic substances, medical and psychological care may be necessary for individual child victims of environmental rights violations and national preventative policies and law reform may be necessary for large scale violations. In practice, courts have imposed a variety of remedies in environmental cases: damages and injunctions to stop activities or provide remediation (Uganda)³³, fines and charges, conditional sentences in conjunction with community service, imprisonment (Sweden)³⁴, upholding or overruling permits (New Zealand),³⁵ cessation of business activities (Tunisia³⁶, Slovenia³⁷), and declaratory judgments and orders to compel the State to reduce its emissions (The Netherlands)³⁸.
- Implement measures to oversee, inspect and monitor the activities of businesses to prevent them from causing **transboundary extraterritorial harm** that violates children's rights, and ensure accountability and remedies where such harm occurs.^{39 & 40} It is encouraged for businesses to embrace their corporate social responsibility and actively engage in facilitating and overseeing essential services such as clean water, sanitation, education, and healthcare, among others, which are fundamental to safeguarding children's rights.⁴¹

³³ CRIN, "Children's Access to Environmental Justice, country report Uganda, December 2022.

³⁴ CRIN, "Children's Access to Environmental Justice, country report Sweden, November 2022.

³⁵ CRIN, "Children's Access to Environmental Justice, country report New Zealand, April 2022.

³⁶ CRIN, "Children's Access to Environmental Justice, country report Tunisia, to be published.

³⁷ RIN, "Children's Access to Environmental Justice, country report Slovenia, to be published.

³⁸ CRIN, "Children's Access to Environmental Justice, country report The Netherlands, to be published.

³⁹ While there is no globally recognized legally binding instrument regarding the responsibilities of the business sector in relation to human rights, the UNCRC Committee in its General Comment number 16 acknowledges that in practice, the obligations and duties to uphold the rights of children go beyond the scope of governmental and state-controlled services and institutions, encompassing private actors and business enterprises as well.

⁴⁰ See UNCRC General Comment 16 Paras. 28, 29, 39 42, and 44.

⁴¹ UNCRC General comment 16 para. 33

B. Snapshot on Right to freedom of association and peaceful assembly

Definition

Peaceful assembly is described in the General Comment No. 37 (2020) on the Right of Peaceful Assembly by the UN Human Rights Committee (HRC) as: “the non-violent gathering by persons for specific purposes, principally expressive ones” (para. 4) “wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected [...] whether they are stationary, such as pickets, or mobile, such as processions or marches.” (para. 6) “In many cases, peaceful assemblies do not pursue controversial goals and cause little or no disruption. The aim might indeed be, for example, to commemorate a national day or celebrate the outcome of a sporting event. However, peaceful assemblies can sometimes be used to pursue contentious ideas or goals. Their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity. These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy” (para.7). “Collective civil disobedience or direct action campaigns can be covered [...], provided that they are non-violent” (para. 16). “A ‘peaceful’ assembly stands in contradistinction to one characterized by widespread and serious violence. [...] ‘Violence’ [...] typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property. Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to ‘violence’.” (para. 15).



Context

Children and young people are currently at the heart and forefront of environmental degradation and climate change campaigns and demonstrations, both in physical and online spaces. They are engaged in denouncing issues that affect them and fighting for a better future. To do this they gather at events - often mass events or on online platforms - to share, demonstrate and demand their rights. These initiatives contribute to their personal development, their sense of belonging to society, their civil and political engagement and to giving impetus to social change.

Children who participate in these gatherings may play different roles. Whether they are organisers, participants or spectators, they all have the same right to peaceful assembly, regardless of the reason for their presence or the extent of their participation.

The UNCRC states that this right should only be subject to necessary and proportionate legal restrictions. Therefore, States and competent authorities are required to create a safe and enabling environment for children and young people to express themselves and assemble peacefully.

The CRC Committee recommends that *“for voluntary, respectful and transparent participation, children should be provided with environmental and human rights education, age-appropriate information, adequate time and resources and a supportive and enabling environment. They should receive information about outcomes of environment-related consultations and feedback on how their views were considered and have access to complaints procedures and remedies when their right to be heard in the environmental context is disregarded”*.⁴²

Unfortunately, there are many obstacles to exercising this right. Children often choose public spaces to express themselves and be heard, but all too often they are excluded from assemblies due to a lack of information, adult permission, or guidance, simply because of their age and status as children. As a result, they are excluded from the public space and from environmental and climate decision-making processes, and their right to assemble and be heard is frequently questioned. Children may also face the risk of repression, criminalisation, abuse of power, harassment, hate speech, cyberbullying/cybercrimes, or violence when fighting for a better future. *“Environmental defenders continue to be exposed to significant risks of penalisation, persecution, harassment and even killings. And these risks do not spare the geographical area of the Aarhus Convention, where environmental defenders are facing reprisals, a shrinking civic space, restrictive legal frameworks and strong attacks from companies”*, warned the Special Rapporteur on Environmental Defenders under the Aarhus Convention, Mr. Michel Forst.⁴³ Under article 3 (8) of the Aarhus Convention, Parties shall ensure that persons exercising their rights in conformity with the provisions of the Convention shall not be penalized, persecuted, or harassed in any way for their involvement.⁴⁴ This protection is crucial for fostering a safe and supportive environment for both adults and children who are dedicated to safeguarding the environment for present and future generations.

⁴² CRC Committee, General Comment 26, Children's rights and the environment with a special focus on climate change, §57, p. 11.

⁴³ <https://unece.org/climate-change/press/un-special-rapporteur-environmental-defenders-presents-his-vision-mandate>

⁴⁴ Aarhus Convention

The obstacles mentioned above can have a significant impact on children's wellbeing and mental health. Being excluded from decision-making processes and public spaces can lead to feelings of powerlessness and a lack of control over their own lives. Children who are repressed or criminalised for standing up for their rights can experience high levels of stress, anxiety, and trauma. These negative experiences can have long-lasting effects on their physical and mental health and well-being. It is crucial that children are provided with safe and supportive spaces to express themselves and participate in decision-making processes regarding environmental issues. By creating inclusive and accessible forums for children to engage in these discussions, they can feel powerful and have their voices heard and acted upon.

To ensure that children can participate in environmental activism without fear of being punished or criminalized, governments and other relevant actors should establish a secure and encouraging environment that upholds their right to peaceful assembly and prevents harassment. This environment should be provided both in physical and online spaces.

Children can also act as human rights defenders in environmental cases, which can expose them to even greater risks. They may face threats, harassment, intimidation, and violence from both State and non-State actors. However, despite the risks, children have been at the forefront of many environmental movements, such as Greta Thunberg and the Fridays for Future movement. By speaking out, organizing protests and strikes, and engaging with decision-makers, they have demonstrated their commitment to environmental protection and climate action. International human rights bodies, such as the CRC Committee and the Office of the United Nations High Commissioner for Human Rights, have recognized the important role that children can play in defending human rights, including the right to a healthy environment. These bodies have also highlighted the need for States to protect children who are human rights defenders and to ensure that they are able to carry out their activities safely and without fear of reprisals.

Children have the right to participate in environmental decision-making processes and act as human rights defenders in environmental cases. However, they face legal, financial, and social barriers, as well as risks to their mental and physical health. It is important to recognize and protect their right to assemble and be heard in environmental matters, as denying this right can have a negative impact on their mental health and overall well-being. States and other actors must take action to remove these barriers and protect the rights of children to participate in environmental decision-making and defend the environment.

International norms

The right to freedom of association and peaceful assembly is a fundamental human right, recognized as one of the foundations of a functioning democracy, and protected by international law, including in the International Covenant on Civil and Political Rights (articles 21 and 22).

The UNCRC requires State parties to recognize the rights of children to freedom of association and peaceful assembly (article 15). The UNCRC also guarantees the right of children capable of forming their own views to express those views freely in all matters affecting them (article 12 (1)), the right to freedom of expression (article 13) and the right to access to appropriate information (article 17).

In addition, with the increasing use of digital technologies, the exercise of these rights has taken on a new dimension, which has prompted the CRC Committee to issue a General Comment on the rights of the child in the digital environment.⁴⁵ In relation to children's participation in environmental activism, the General Comment recognises the important role that digital technologies can play in facilitating children's engagement in environmental decision-making processes and expressing their views on environmental issues. It highlights the need to ensure that children are able to participate in these processes safely and without fear of reprisals, including by protecting them from any form of online harassment or criminalisation.

Good practices and policy reform

Several countries have witnessed inspiring initiatives promoting the right to freedom of peaceful assembly for children in climate justice cases. For example, in Germany has witnessed the powerful Fridays for Future movement, where students organise peaceful protests and strikes to demand climate action.⁴⁶ Belgium's Youth for Climate movement has mobilised children and young people to participate in demonstrations advocating for stronger climate policies.⁴⁷ In the United States, the Sunrise Movement has organised youth-led actions to raise awareness and push for policy changes.⁴⁸ The UK Student Climate Network has played a significant role in organising school strikes across the United Kingdom, empowering students to peacefully assemble and call for urgent climate measures. These initiatives demonstrate the determination and active involvement of children and youth in the fight for climate justice.⁴⁹

In Germany, Scotland, Belgium, and Sweden, significant policy reforms have been implemented to support children's right to freedom of peaceful assembly in the context of climate activism. These reforms range from recognising student climate strikes as legitimate forms of peaceful assembly to ensuring legal protections for children's participation in peaceful protests and emphasising the importance of their voices in addressing environmental issues. These measures reflect a growing recognition of children's rights and their crucial role in shaping climate justice movements.

⁴⁵ Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation>.

⁴⁶ <https://fridaysforfuture.de/>

⁴⁷ <https://youthforclimate.be/>

⁴⁸ <https://www.sunrisemovement.org/>

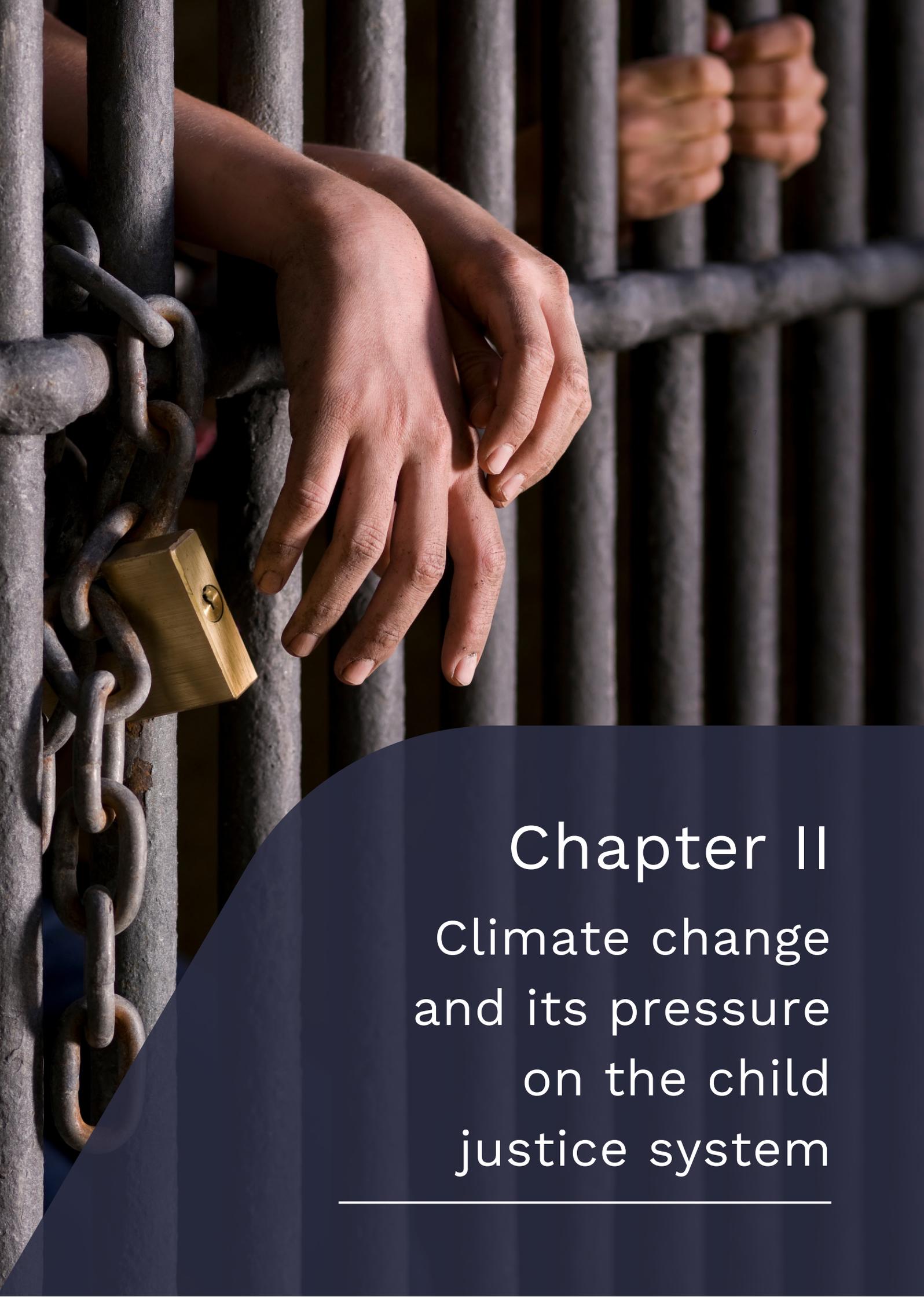
⁴⁹ <https://ukscn.org/>

Key strategic actions to be put in place

- **End the criminalization and prosecution of children and prevent the arrest and/or detention of children** for exercising their rights to freedom of expression, association and peaceful assembly in all cases, and particularly with related with environmental activism.
- Provide **timely and appropriate information** for children to empower them to organize, lead and attend events including demonstrations, protests, ensuring that this events are not interfering with their right to education. Also, provide this information to parents and/or guardians on these events as their consent will also be sometimes required for children's participation in these activities.
- Undertake the **necessary policy reforms** to guarantee that children can assemble peacefully and freely express their views on climate and environment-related issues, even if it takes a form of criticism or opposition to the State institutions or power in place. These reforms should also encompass measures to prevent educational institutions from retaliating against children who participate in activities aimed at defending human rights⁵⁰. Children's views should be taken into account bases on their age an maturity when deciding on these policy reforms.
- Establish **effective appeal and complaint procedures** to protect and address rights violations related to climate activism by children and young people. These mechanisms are essential in relation to challenging unjustified restrictions on the right to peaceful assembly, to complain against the use of force in the policing of assemblies or to challenge arrest and detention as a result of the policing of assemblies where they result in violations of the rights of children campaigning for climate justice⁵¹.
- Prioritise the **regulation and prosecution of hate crimes against children expressing themselves online and offline to ensure their safety and well-being**. States should support children's rights to peaceful assembly by providing security services and safe spaces where children can peacefully gather to protest, demonstrate or promote their climate activism.

⁵⁰ Child Rights Connect, Implementation Guide for States and Non-State actors on the rights of children as human rights defenders, 2020.

⁵¹ CRIN, Submission on the Draft General Comment No. 26 of the Committee on the Rights of the Child on children's rights and the environment with a special focus on climate change, para. 19.



Chapter II

Climate change and its pressure on the child justice system

The impacts of climate change extend beyond environmental concerns and have significant implications for various aspects of society. One area greatly affected is the child justice system, which faces increasing pressure due to the consequences of a changing climate. As extreme weather events become more frequent and intense, they disrupt communities, displace populations, and exacerbate socio-economic inequalities. These factors, in turn, can lead to an uptick in criminal activity involving children and youth.

The connection between climate change and the child justice system is multifaceted. It encompasses both direct and indirect effects, including displacement, loss of livelihoods, and the breakdown of social support systems. These challenges contribute to an environment where children are more vulnerable to exploitation, violence, and involvement in criminal activities. Moreover, the strain placed on infrastructure and resources due to climate-related disasters can hinder the effective functioning of the child justice system and its administration. Already overwhelmed systems may struggle to adequately respond to and address the specific needs and rights of children in conflict with the law.

Recognizing the interplay between climate change and the child justice system is crucial for developing comprehensive strategies that address the root causes and consequences of both issues. By understanding the unique challenges faced by children and youth in the context of a changing climate, we can work towards implementing proactive measures and prevention strategies that protect their rights, prevent their involvement in criminal activities, and ensure access to fair and effective justice systems.

A. Snapshot on Administration of justice in the climate crisis

Definition

The **administration of justice** pertains to the implementation of a government's legal system. In the context of the **climate crisis**, it involves the government's ability to adapt and apply this process to prevent and address the consequences of the crisis, which is considered the most significant crisis of our time.

Context

Children in contact and in conflict with the law can be directly or indirectly victims of consequences linked to climate change situation and/or event. Most importantly, children who are deprived of their liberty through detention are among the most vulnerable to the negative effects of natural hazards, including extreme weather and climate change. For example, they are not as easily able to evacuate in the event of extreme weather conditions and their consequences (e.g. flooding, epidemics, etc.), and conditions of detention are also directly affected (e.g. extreme heat in facilities, no social distancing in case of disease, etc.).

Climate change has amplified heat-related struggles in state (adult) prisons, exacerbating an already dire situation. For example, in recent years, states such as Michigan, Minnesota, South Dakota, Washington, and Wisconsin have witnessed extreme heatwaves within their correctional facilities.⁵²

This alarming trend is further aggravated by the absence of adequate infrastructure for proper ventilation or cooling systems capable of managing such extreme heat.

The lack of air conditioning in places of detention, juvenile facilities, and psychiatric centres during rising temperatures compromises the well-being of detained people, but also gives rise to a host of other challenges.

These challenges include an elevated risk of heat-related illnesses among people deprived of liberty, a surge in violent incidents, and a concerning increase in staff turnover, as emphasized by experts and advocates in the field.



⁵² <https://stateline.org/2023/08/14/stifling-prison-heat-used-to-be-just-a-southern-problem-not-anymore/>

Highlighting the urgent need for attention and action, a study published in March by PLOS One and authored by researchers affiliated with esteemed institutions like Brown University, Boston University, and Harvard University, underscores the link between extreme heat and fatalities within detention centres across the United States.⁵³ This study provides one of the earliest pieces of epidemiological evidence connecting the climate crisis directly to detention centres mortality rates. To arrive at their findings, the researchers meticulously analysed deaths occurring in both State-run and privately operated detention centers during the months of June, July, and August from 2001 to 2019. Their alarming discovery revealed a direct correlation between a 10-degree temperature increase above the historical average and a 5.2% rise in overall deaths or a 6.7% increase in deaths of detained people attributed to heart disease.⁵⁴

Moreover, the scorching conditions prevailing within these prison walls contribute to a highly volatile atmosphere, one that fosters aggression and escalates the likelihood of violent incidents. This aggravating circumstance not only endangers the lives of people deprived of liberty but also puts immense strain on prison staff who must navigate these tense situations. The extreme heat also emerges as a catalyst for high staff turnover and critical staffing shortages within State detention centres. A report cites reports from staff and labor leaders, illustrating how the oppressive heat heightens irritability and hampers swift responses to security incidents.⁵⁵

A similar narrative unfolds in Texas, where the grave issue of deaths of detained people within stifling detention centres environments persists. Strikingly, the state seldom acknowledges heat as a significant contributor to these fatalities,⁵⁶ often classifying them as "unknown causes" of death. This misclassification obscures the real cause of death,⁵⁷ which is intrinsically linked to the consequences of climate change. Recognizing the true cause of these deaths as a result of climate change is pivotal for accurate data collection, enabling a more comprehensive understanding of the scope of this crisis.

While the urgency of addressing these challenges is evident, it's disheartening that many states remain entrenched in climate denialism, failing to take substantial action.⁵⁸ The devastating impacts of natural disasters and adverse weather events on detained persons' lives can be mitigated through meticulous planning, prevention measures, and effective risk reduction strategies. Central to disaster risk reduction (DRR) is understanding the risks' magnitude, likelihood, and implications.

By instituting both tangible infrastructural improvements and policy frameworks for prevention and mitigation, we can actively work toward averting the catastrophic consequences of natural hazards on inmates, staff, and the broader justice system.

The State must assume its duty of care to protect the lives, education, safety and health of children deprived of their liberty, as required by international and regional human rights standards and instruments. Children deprived of their liberty are therefore heavily reliant on institution or detention centre staff to ensure their health and safety in the event of a disaster.

⁵³ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0281389>

⁵⁵ <https://www.nj.gov/correctionsombudsperson/documents/Jail%20Inspection%20Reports/DOC%20Ombudsperson%20Special%20Report-%20Heat.pdf>

⁵⁶ <https://www.texastribune.org/2023/06/28/texas-prisons-heat-deaths/>

⁵⁷ 2.:59 <https://www.msnbc.com/alex-wagner-tonight/watch/as-texans-suffer-in-the-heat-state-republicans-play-politics-18572294962>

⁵⁸ <https://stateline.org/2023/08/14/stifling-prison-heat-used-to-be-just-a-southern-problem-not-anymore/>

By instituting both tangible infrastructural improvements and policy frameworks for prevention and mitigation, we can actively work toward averting the catastrophic consequences of natural hazards on inmates, staff, and the broader justice system.⁵⁹

The State must assume its duty of care to protect the lives, education, safety and health of children deprived of their liberty, as required by international and regional human rights standards and instruments.⁶⁰ Children deprived of their liberty are therefore heavily reliant on institution or prison staff to ensure their health and safety in the event of a disaster.

To do so, States need to develop appropriate policies and sufficient resources to build disaster-resistant facilities and infrastructure for children deprived of liberty, reduce overcrowding, establish pre-existing plans for cooperation and collaboration with relevant actors (rescue, hospitals, transport, courts) and train staff and individuals in these facilities. An emergency plan or protocol should be followed in the event of a disaster. These plans should include evacuation and accommodation-responses and the provision and storage of emergency supplies, including medicines, food and water, both within the facility and at the planned evacuation site.⁶¹

In addition, non-custodial measures for children should be given priority in an adverse climate.

International norms

All children deprived of their liberty should be guaranteed protection of their rights to life, safety, and health in the event of deprivation of liberty in the context of the climate crisis. The right to life is provided for in the International Covenant on Civil and Political Rights (article 6). The UNCRC provides for the right to safety and health (articles 3 (3) and 24), adequate standard of living (article 27), dignity (article 37 (c) and 40 (1), and imprisonment as a measure of last resort (article 37 (b)).

In addition, relevant provisions from the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),⁶² the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)⁶³ and the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)⁶⁴ deal with the rights to life, dignity, security, reduction of the use of imprisonment and prison population.

Good practices and policy reform

Some countries follow guidelines established by the government to reduce risk in prisons in the event of a disaster. In Indonesia the guidelines of the Director-General of Corrections of the Ministry of Law and Human Rights provides a comprehensive template of standard operating procedures for earthquakes, tsunamis, smog, volcanic eruptions, fires, floods and landslides, clearly outlining what is required for each hazard event, including elements covering activities before, during and after the occurrence of a disaster.⁶⁵

Policies should, in any case, respect the principle of deprivation of liberty as a measure of last resort.

⁵⁹ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0281389>

⁶⁰ Such as the UNCRC, ICCPR, ECHR, ACRWC.

⁶¹ Penal Reform International, Natural hazards and prisons: Protecting human rights of people in prison in disaster prevention, response and recovery: A guide to disaster risk reduction for prisons, pp. 1- 32.

⁶² The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

⁶³ The UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)

⁶⁴ The UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)

⁶⁵ Penal Reform International, Natural hazards and prisons: Protecting human rights of people in prison in disaster prevention, response and recovery: A guide to disaster risk reduction for prisons, p. 15

Key strategic actions to be put in place

- Develop appropriate policies and sufficient resources to build **disaster-resistant facilities and infrastructure**.
- States should **prioritize Inclusive Disaster Risk Reduction (DRR) within child justice systems and policies at the national, regional/state and local levels**. Ensure that child justice policies and DRR plans explicitly include provisions for the safety and well-being of children, in particular those deprived of liberty during natural disasters. Consider the unique needs of vulnerable groups within detention and the immediate release of children deprived of liberty.
- Facilities **establish clear and comprehensive disaster preparedness and response plans for place where children can be deprived of their liberty**, with a focus on early warning systems, evacuation procedures, and resource allocation. These plans should prioritize the safety of both children and staff.⁶⁶
- **Incorporate human rights, children's rights and health considerations into DRR plans for facilities**. Ensure that responses to natural disasters prioritize the physical and mental well-being of children deprived of their liberty while upholding their fundamental right.
- **Establish accountability mechanisms to evaluate and improve the effectiveness of DRR efforts within the administration of justice for children**. Develop recovery processes that focus on rehabilitating affected facilities, addressing the needs of children, and ensuring accountability for any lapses in preparedness and response.
- **Reduce the use of deprivation of liberty and reduce overcrowded populations**. This will help to improve the effectiveness of any DRR measures.⁶⁷
- Develop **emergency plans** in case of disaster.
- Ensure the **availability, safety and suitability of evacuation transport** and guarantee it is possible to properly separate different categories of people during transportation (including by gender and adults from children and by risk/security level).
- **States must ensure training of both staff and children in detention**, focusing on the following key areas: command and control structures for role allocation and responsibility assignment among staff, risk identification, basic procedures including first aid, emergency response, and health and safety protocols, and effective communication strategies to ensure that children are informed about risks and procedures and are involved to the extent possible while considering security concerns.⁶⁸
- **Establish pre-existing cooperation and coordination with the different services**. Facilities should establish an emergency contact system for staff. Staff should be well-trained in communication equipment and technology. Ensure inclusive communication about disaster risks and responses, considering language diversity, mental health, literacy levels, and education. Adapt communication styles for specific groups of persons deprived of liberty, especially children, and sub-groups with specific needs among these children, and convey the same information to external agencies and partners.⁶⁹
- Establish rehabilitation and reintegration support for children. After a natural disaster, **implement a comprehensive rehabilitation and reintegration programme for children deprived of their liberty affected by the disaster**. This programme should include access to necessary healthcare, child-friendly psychosocial support, and vocational training for young adults to facilitate their successful reintegration into society upon release.

⁶⁶ Idem, p. 11

⁶⁷ Idem, p. 14

⁶⁸ Idem, p. 16

⁶⁹ Idem, p. 17

- Put **mitigation measures** in place to ensure the **continuation of services** and upholding of human and children’s rights including for example constructing earthquake-resistant buildings, conducting regular evacuation drills, and maintaining emergency supplies.
- Ensure that facilities are prepared for the disaster risks and better able to withstand the impact of adverse weather and heatwaves. **Well-designed and built child and youth justice infrastructure** will save money and resources in the long-term, preventing the need for costly repairs after a natural disaster.⁷⁰ To achieve this, it is advisable to encourage and support public-private partnerships. These collaborations can harness the most advanced and recent innovations in disaster resilience, benefiting child and youth justice infrastructure by incorporating the best practices and technologies employed in private efforts to protect these vital facilities.

⁶⁶ PRI, *Ibid.*

B. Snapshot on Societal and urbanistic change & children and youth crime prevention strategies

Definition

The concept of **societal and urbanistic change** aims to establish a connection between architectural and urban projects and the dynamic conditions and challenges of contemporary society, such as those related to climate change; global warming, sea level rise, floods, drought and excessive heat.⁷¹

Children and youth crime prevention strategies encompass various approaches, such as mediation or peer mediation, community-based services and programs, child and youth participation, preventive restorative measures to avoid re-offending, and others. These strategies need to be integrated into prevention policies that address the diverse needs of children and young individuals and safeguard their well-being. A multi-sectoral approach to child and youth crime prevention is crucial.⁷² The prevention of child and youth crime is an essential component of overall crime prevention in society.⁷³



⁷¹ <https://royaldanishacademy.com/programme/urbanism-and-societal-change>

⁷² Resolution 2016/18 adopted by the Economic and Social Council on 26 July 2016: *"Mainstreaming holistic approaches in youth crime prevention"*

⁷³ The UN Guidelines for the Prevention of the Prevention of Delinquency (the Riyadh Guidelines), Fundamental Principles

Context

The effects of climate change have already begun to radically alter the lives of people around the world. Sudden changes in temperature, unusual fluctuations in precipitation and the occurrence and frequency of extreme weather events such as sea level rise and extreme heat can exacerbate socio-economic conditions. This results in increased migration for security and survival reasons, impacting urban areas and their resources such as necessities.

Climate change hampers the ability of governments to provide basic services such as health and education, threatening the safety and security of society, especially for its most vulnerable members, such as children and young people. There is growing evidence that climate change is a powerful structural driver of violence against children, exacerbating the threat to them in multiple contexts (family, community and societal).⁷⁴ Studies have also shown a potential increase in violence and the prevalence of criminal activity among young people.⁷⁵

There is also evidence that violent situations such as protests, insurgencies, crime, armed conflict and war are more likely to occur in areas already destabilised by violence and where the State presence is more limited, such as in central and northern Mali and central and northern Nigeria.⁷⁶

Faced with these changes, it is therefore imperative to set up systems for the protection of children and young people and the prevention of child and youth crime. To do this, it is necessary to take into account the societal and urban evolution of places affected by climate change. Justice must remain accessible whatsoever, therefore the judiciary must be digitised, restorative justice and measures for children and young people must be privileged and alternative measures to detention must be preferred to deprivation of liberty.

International norms

The climate crisis represents a multi-dimensional children's rights crisis, threatening most of the rights protected by the UNCRC, including children's rights to protection from all forms of violence (article 19), life, survival, and development (article 6), health (article 24), education (articles 28 and 29), and more.

By recognizing the interconnection between the climate crisis, children's rights protected by the UNCRC, and other relevant norms such as the Riyadh Guidelines,⁷⁷ and the Fundamental Principles of Juvenile Justice (such as the Beijing Rules⁷⁸ and the Havana Rules)⁷⁹ comprehensive strategies can be developed to address the multi-dimensional children's rights crisis caused by the climate crisis.

⁷⁴ End violence against children, How the climate crisis is driving violence against children, key messages.

⁷⁵ Trinidad, A., San Juan, C., & Vozmediano, L. (2022). Environmental Conditions Associated With Youth Delinquency Events: A Temporal, Meteorological, and Contextual Perspective. *Environment and Behavior*, 54(3), 629–654. <https://doi.org/10.1177/00139165211060521>.

⁷⁶ <https://igarape.org.br/en/climate-security/climate-security-in-africa/>.

⁷⁷ The UN Guidelines for the Prevention of the Prevention of Delinquency (the Riyadh Guidelines), Fundamental Principles

⁷⁸ The UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)

⁷⁹ The UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)

Good practices and policy reform

In the development of new towns like Diamniadio in Senegal, the concept of societal and urbanistic change takes on significant importance. These new urban centers must adapt to the dynamic conditions and challenges of contemporary society, including the pressing issues posed by climate change. Situated approximately 30 kilometers from the coast near Dakar, Diamniadio is being designed as a modern urban hub, complete with new infrastructure and facilities such as an airport and conference center. As this new town takes shape, it is crucial to incorporate architectural and urban planning strategies that effectively address the potential impacts of climate change.⁸⁰

With the increasing risks of global warming, sea level rise, floods, droughts, and excessive heat, it is imperative to ensure that the town's infrastructure and buildings are resilient to these challenges. This requires a comprehensive approach that goes beyond the physical design and considers the social and economic dimensions of the town as well.

In particular, the needs and vulnerabilities of the residents, especially children and other vulnerable groups, should be taken into account. Systemic child participation should be integrated into all matters that concern them, including transportation, new town projects, reallocation efforts, and urban changes. By actively involving children in decision-making processes, their perspectives, insights, and needs can shape the development of Diamniadio and ensure that it becomes a sustainable and inclusive urban center that prioritizes the well-being and future of its residents.

The same reasoning should be applied by States when considering the construction and development of facilities and infrastructure where children may be deprived of liberty. Involving children in discussions and decision-making processes related to infrastructure, development, and community life can be an effective strategy for preventing crime. By including children's perspectives and actively seeking their input, States can better understand their needs, aspirations, and concerns related to climate change. States can contribute to the holistic development of children while building safer and more inclusive communities.

⁸⁰ <https://www.thegpsc.org/sites/gpsc/files/note-capitalisation-progep-02-web-191204.pdf>

Key strategic actions to be put in place

- **Integrating climate change considerations:** Ensure that architectural and urban projects account for climate change challenges like global warming, sea-level rise, floods, droughts, and excessive heat. This involves designing resilient infrastructure, incorporating social and economic aspects into planning.
- **Prioritize long-term planning on climate resilience projects by using reliable data,** engaging in scenario planning, and integrating sustainable design practices. Involve local communities, collaborate across disciplines, align with climate policies, and establish ongoing monitoring to adapt to changing conditions. This comprehensive approach ensures that architectural and urban projects are well-prepared for climate change challenges while considering social and economic aspects, all while staying ahead of future developments based on solid evidence.
- **Child and youth crime prevention:** Develop comprehensive strategies encompassing mediation, community-based services, preventive restorative measures, and child and youth participation. Integrate these strategies into prevention policies that address diverse needs, safeguard well-being, and contribute to overall crime prevention.
- **Multi-sectoral approach:** Adopt a collaborative approach involving government agencies, civil society, educational institutions, and communities to address underlying causes and risk factors of crime among children and young people.
- **Digitalization of the judiciary:** Digitize judicial processes to ensure accessible and efficient justice for all, including children and young individuals. Enhance justice delivery and contribute to preventing child and youth crime.
- **Alternative measures to detention:** Prioritize alternatives to detaining children and young people involved in criminal activities. Promote restorative justice focused on rehabilitation, reintegration, and addressing root causes, rather than resorting to deprivation of liberty.



Recommendations

Recommendations

Here is a list of 10 recommendations addressed to policymakers at national and international levels, considered as priorities to ensure children's access climate justice:

1. Establish a comprehensive climate change framework: Integrate children's rights, including their right to a clean and sustainable environment, into national and international climate change policies and frameworks, in compliance with the CRC General Comment No. 26 "Children's rights and the environment with a special focus on climate change". Furthermore, it is imperative that States proactively prepare and implement dedicated national plans to ensure the effective realization of these integrated children's rights.

2. Implement legal and policy reforms: Enact comprehensive legal and policy reforms to ensure unimpeded access for children to child-friendly justice and adequate legal protection of children's rights in the context of climate change.

3. Enhance access to climate justice for children: Remove barriers such as cost, distance, and procedural complexity to ensure equal access to justice for children. Provide free legal assistance and support tailored to the needs of children. Establish child-friendly complaint mechanisms that are accessible and adapted to children's level of understanding and communication, enabling them to report violations of their rights related to climate change.

4. Foster children's participation in decision-making: Create opportunities for meaningful and inclusive participation of children in climate-related decision-making processes at all levels, ensuring their voices are heard and their perspectives are considered. Provide safe and inclusive spaces for expression, gathering, and association to allow children to voice their concerns and claims related to environmental issues and climate change.

5. Use deprivation of liberty of children as a measure of last resort: Promote alternatives to the detention of children involved in climate change-related offenses, emphasizing rehabilitation, reintegration, and addressing underlying causes rather than resorting to imprisonment.



6. Promote climate-resilient infrastructure and services: Invest in climate-resilient infrastructure and services that safeguard children from the impacts of climate change, including improved housing, healthcare, and disaster preparedness measures. Apply these principles to facilities and infrastructure where children may be deprived of their liberty.

7. Develop prevention strategies: Develop and implement prevention strategies that integrate the challenges of climate change, taking measures to reduce risks and negative impacts on children, including awareness programmes, education, and capacity-building initiatives.

8. Ensure accountability and enforcement mechanisms: Establish mechanisms to hold governments, businesses, and other actors accountable for their actions or inactions that contribute to climate change and violate children's rights. Strengthen enforcement mechanisms to ensure compliance with climate justice obligations.

9. Adopt multi-sectoral approach: Foster collaboration among government agencies, civil society, educational institutions, and communities to address the underlying causes and risk factors of crime among children and young people in the context of climate change.

10. Foster international cooperation: Enhance international cooperation and collaboration to address the global nature of climate change and its impact on children. Facilitate the exchange of knowledge, experiences, and best practices among countries to promote effective responses and solutions.

These recommendations aim to prioritize children's access to climate justice and ensure their rights are protected in the face of the climate crisis.





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Conclusions

Conclusions

As the world grapples with the challenges of the climate crisis, it is crucial to recognise the significant role that children and youth play in shaping the future of our planet. Engaging with them, supporting the enforcement of their rights, facilitating access to justice mechanisms, and creating an environment conducive to their growth and active participation are key factors in achieving peace, justice, climate resilience, and sustainable development for all.

The potential of children and young people should not be underestimated, as they possess the energy, creativity, and determination to effect positive change in their communities and beyond. It is imperative to prioritise the needs and voices of children and young people, recognising them as powerful agents of change.

By valuing their perspectives, providing opportunities for leadership, and addressing the challenges they face, we can build a more inclusive, equitable, and sustainable world for present and future generations. However, it is essential to acknowledge the urgency of the climate crisis. Recent reports from the [Intergovernmental Panel on Climate Change \(IPCC\)](#) have highlighted the severe consequences we face if immediate action is not taken!

While it is important to remain optimistic, we must also confront the stark reality of the situation. The fate of future generations hangs in the balance, and the time for meaningful action is now! Children should be listened to and supported to drive reforms because they will be the first generation to bear the brunt of the devastating impacts of climate change. By heeding their voices and incorporating their ideas, we can mobilise a collective response to tackle the climate crisis head-on.

Moreover, focusing on systemic child justice and child participation is crucial. It means ensuring that children have meaningful opportunities to have their rights realised and engage in decision-making processes, from local to global levels. Their perspectives and solutions should be at the forefront of climate initiatives, as they have a unique understanding of the challenges they face and the actions required to address them.

While the urgency of the situation may be alarming, it is through acknowledging this reality that we can galvanise the necessary actions and create a sense of urgency among decision-makers and the public. By panicking, we can provoke a stronger response and inspire transformative change. Let us harness the potential of children and young people as we work together towards a brighter and more sustainable future for all.

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