

Third party written observations by Save the Children International in *Duarte Agostinho & 5 Others v Portugal & 32 Others* (application no. 39371/20) before the European Court of Human Rights

## I. INTRODUCTION AND SUMMARY

1. These submissions are made by Save the Children International, having received *pro bono* assistance from Timothy Otty QC, Ravi Mehta (both of Blackstone Chambers), Emma-Louise Fenelon (of 1 Crown Office Row) and Hausfeld & Co. LLP (London), in accordance with the Court's letter of 25 March 2021 pursuant to r.44(3) of the Rules of Court.
2. Save the Children is the world's leading independent organisation for children. Its extensive work for, and with, children has shown that, at its core, climate change is an intergenerational child rights crisis that endangers children's survival, development, education, and protection, and which has a progressively starker impact over the course of their lifetimes.
3. Children are the most vulnerable group in any crisis, and climate change is no exception. In many places where it conducts programmes, in particular the Global South and in developing countries, Save the Children has witnessed first-hand how the effects of climate change are harming children and impacting the enjoyment of their rights.<sup>1</sup> Save the Children is therefore acutely aware of the potential dangers caused by failures to adequately address climate change and therefore seeks to assist the Court in considering the allegations raised by the Application, as the adverse effects of the climate crisis increasingly manifest themselves in Europe.
4. The issues raised in the Application are significant and have the potential to have far-reaching consequences for the rights protected by the European Convention on Human Rights (**ECHR**). These submissions seek to illustrate the specific vulnerability of children to the effects of climate change and to address the procedural and substantive rights of children engaged by the Application.
5. In light of the variety and importance of those rights, by this intervention Save the Children invites the Court to consider and incorporate additional legal sources and materials in its determination of this significant case. In particular, Save the Children submits that:
  - a. Given the gravity of the impact of climate change on children, and the significance of their rights engaged by the Application, the Court should not apply an excessively exacting standard to issues such as admissibility or the burden and standard of proof;
  - b. The best interests of children and their substantive and procedural rights should be pre-eminent in decision-making and policy. A failure to ensure that this is the case violates international law and the requirements of the ECHR; and
  - c. The need to act to safeguard children's rights is immediate and extensive, given the systemic nature of the threat posed by climate change and its wide-ranging negative impacts on the most vulnerable.

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<sup>1</sup> Save the Children, [A Collection of Success Stories from the Humanitarian Sector, Bangladesh](#) (2016); Save the Children, [Two Years of Drought Response in Ethiopia](#) (2016); Save the Children, [Climate Change in Kenya: Projections, Impacts And Way Forward](#) (2016).

## II. PARTICULAR AND SPECIFIC VULNERABILITY OF CHILDREN TO CLIMATE CHANGE

6. The UN Human Rights Council's resolution of 7 October 2020<sup>2</sup> on realising the rights of the child through a healthy environment (**2020 HRC Resolution**) expresses a profound concern that children worldwide continue to be affected by the adverse impacts of climate change or other forms of environmental harm, depriving them of their rights and of the opportunity for full and harmonious development. It further recognises that children, due to their developing metabolism, physiology, and developmental needs, are particularly vulnerable to environmental harm. Exposure to effects such as pollution of the air, soil and water, and exposure to hazardous substances and wastes, can have a lifelong impact on the physical and mental wellbeing of children, as their health outcomes and development are compromised from an early age and may manifest over long periods of time.<sup>3</sup> The 2020 HRC Resolution reaffirms a consistent body of materials<sup>4</sup> on this point, and the more recent WHO-UNICEF-Lancet Commission has reiterated that children are the most vulnerable to the lifelong environmental effects of climate change<sup>5</sup>.
7. In addition, children that are already facing inequalities rooted in poverty, migration, social marginalisation or discrimination based on gender, disability or other characteristics are disproportionately at risk to the impacts of climate change. Further, climate change is also likely to exacerbate such inequalities.<sup>6</sup> This is more apparent in developing countries where those factors are widespread, but more severe impacts are already visible among the poorer and more marginalised segments of the population in the Respondent States, where, in some cases, child poverty is also on the rise.<sup>7</sup>

### Impacts on physical health

8. Adverse impacts of climate change on children begin in the foetal period. Evidence shows that extreme heat exposure and the associated heat stress increase delivery risk for pregnant women, such as shorter gestations.<sup>8</sup> Moreover, multiple studies indicate that maternal exposure to extreme heat and air pollution can lead to lower birth weight and affect length at birth, with implications for

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<sup>2</sup> United Nations Human Rights Council Resolution, Rights of the child: realizing the rights of the child through a healthy environment (5 October 2020) [UN Doc. A/HRC/45/L.48/Rev.1](#).

<sup>3</sup> *Ibid*, at page 3.

<sup>4</sup> United Nations Human Rights Council, Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child, Report of the Office of the United Nations High Commissioner for Human Rights (4 May 2017) [UN Doc. A/HRC/35/13](#); John Knox, Former UN Special Rapporteur on the Environment, 34<sup>th</sup> session of the Human Rights Council (2 March 2017), [Panel discussion on climate change and the rights of the child](#); Human Rights Council, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox (30 December 2013) [UN Doc. A/HRC/25/53](#), at paragraphs 73–75.

<sup>5</sup> Clark H *et al*, [A future of the world's children? A WHO-UNICEF-Lancet Commission](#) (2020) Lancet, Vol. 395, 605–658, at page 609.

<sup>6</sup> Hallegatte S *et al*, [Shock Waves: Managing the Impacts of Climate Change on Poverty](#) (2016) Climate Change and Development, World Bank, see in particular pages 3, 9 and 141.

<sup>7</sup> In 2018, one in four children in the EU were growing up at risk of poverty or social exclusion, see Save the Children, [The Impact of COVID 19 on Children in Europe](#) (2020). In the UK, almost a third of children were living in poverty in 2019-20, see Child Poverty Action Group, [Child poverty facts and figures](#) (March 2021). See also Joseph Rowntree Foundation, [Climate change and social justice: an evidence review](#) (2014).

<sup>8</sup> Olson DM, Metz G, [Climate change is a major stressor causing poor pregnancy outcomes and child development](#) (2020) F1000Research, Vol.9, F1000 Faculty Rev-1222, at page 3.

both the health of the neonate and childhood development.<sup>9</sup> Emerging evidence also suggests that increased in-utero exposure to air pollution could have cognitive and behavioural effects on the child later on in life, including on intelligence quotient.<sup>10</sup>

9. In their early years, children are particularly under-equipped to deal with climate-related stresses. For example, young children suffer greatly from exposure to air pollutants, especially fine particulate matter (**PM**) pollution (a by-product of fossil fuel combustion) which will shift in concentrations and worsen with climate change-related alterations.<sup>11</sup> In low- and middle-income countries, 98% of all children under the age of five are exposed to PM2.5 levels above the World Health Organisation (**WHO**)’s Air Quality Guidelines (**AQG**). In higher-income countries, including many of the Respondent States, 52% of children under the age of five are currently exposed to levels above the AQG.<sup>12</sup> This can have life-long consequences for children’s health, leaving them at increased risk of lung damage and impaired lung growth.<sup>13</sup> Save the Children found that climate change may worsen the risk factors, such as air pollution, that increase the incidence of childhood pneumonia – the leading infectious cause of death among children under five.<sup>14</sup> A recent study looking at the burden of asthma on children across 18 European countries estimates that up to 33% of incident childhood asthma cases across Europe may be attributable to outdoor air pollution.<sup>15</sup>
10. Children are also more exposed than adults to the life-threatening effects of extreme weather events, such as high temperatures and heatwaves of the kind that are cited in the Application. This is because children are less able to regulate their body temperature and are dependent on others to regulate the temperature of the surrounding environment. In addition, because children have a larger body surface area-to-mass ratio, there is a greater temperature transfer between the environment and the body.<sup>16</sup> Thus, in extreme heat, children are at greater risk of electrolyte imbalance, fever, kidney disease, and respiratory disease.<sup>17</sup> If emissions continue to grow, then, by 2100, around 74% of the world’s population could be exposed to periodic heatwaves so extreme that they can kill.<sup>18</sup> Therefore, children, and future generations, will inevitably bear a disproportionate share of those effects.

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<sup>9</sup> Helldén D *et al*, [Climate change and child health: a scoping review and an expanded conceptual framework](#) (2021) *Lancet Planet Health*, Vol. 5, e164–75, at page e170; Anderko L *et al*, [Climate changes reproductive and children’s health: a review of risks, exposures, and impacts](#) (2020) *Pediatric Research*, Vol. 87, 414–419, at page 417.

<sup>10</sup> Perera F *et al*, [Towards a fuller assessment of benefits to children’s health of reducing air pollution and mitigating climate change due to fossil fuel combustion](#) (2019) *Environmental Research*, Vol. 172, 55–72.

<sup>11</sup> *Supra* note 9, at page e168.

<sup>12</sup> WHO, [Air pollution and child health: prescribing clean air](#) (2018).

<sup>13</sup> In the UK, the [London Inner South Coroner’s Court](#) ruled in December 2020 that air pollution was a contributory factor to Ella Adoo-Kissi-Debrah’s death in 2013. On 20 April 2021, the coroner published [a formal report](#) calling for, *inter alia*, lower air pollution limits in line with the WHO guidelines.

<sup>14</sup> Save the Children, UNICEF, [Fighting for Breath](#) (2019), at page 2.

<sup>15</sup> Khreis H *et al*, [Outdoor air pollution and the burden of childhood asthma across Europe](#) (2019) *The European Respiratory Journal*, Vol. 54(4).

<sup>16</sup> Xu Z *et al*, [Impact of ambient temperature on children’s health: a systematic review](#) (2012) *Environmental Research*, Vol. 117, 120–131.

<sup>17</sup> Watts N *et al*, [The 2019 report of The Lancet Countdown on health and climate change: ensuring that the health of a child born today is not defined by a changing climate](#) (16 November 2019), Vol. 394, 1836–1878.

<sup>18</sup> Mora C *et al*, [Global risk of deadly heat](#) (2017) *Nature Climate Change*, Vol. 7, 501–506.

11. Studies conducted in multiple countries, including the Respondent States, support the fact that children are more likely to be associated with heat-related morbidity and mortality.<sup>19</sup> Children are among the most susceptible to infectious disease pathogens (e.g., cholera and diarrhoea) as well as to vector-borne diseases (e.g., malaria and dengue fever), both of which have been shown to increase due to climate change.<sup>20</sup> Whilst this has been most evident in developing regions – i.e., where such diseases are already endemic and are exacerbated by reduced access to health services – these diseases are projected to spread to other regions due to higher temperatures, humidity and precipitation. This can be evidenced by similar food-borne infectious diseases, such as salmonella, which have been more predominant in much of continental Europe due to higher-than-average temperatures.<sup>21</sup> By 2030, it is estimated that climate change will result in the death of an additional 48,000 children under fifteen years of age from diarrhoeal diseases in particular.<sup>22</sup>

### Impact on mental health

12. Beyond the physical harms, climate change increases the susceptibility of children to worsening mental health both directly and indirectly, limiting their opportunities to lead fulfilling lives now and as adults.
13. Several studies provide evidence of poorer mental health in children and adolescents who have been directly exposed to natural disasters.<sup>23</sup> Disasters – including extreme weather events such as those at issue in this case – place children at a high risk of consequences such as post-traumatic stress disorder, depression, and adjustment disorder.<sup>24</sup> The same can be said for related traumatic stress that is connected to climate change, such as witnessing deaths and injuries that are related to extreme weather events.<sup>25</sup>
14. Such direct impacts are particularly evident in developing countries due to the higher incidence in those countries of climate change-related disasters which may disrupt a child’s broader social surrounding, such as homes, schools, and neighbourhoods – all of which affect a child’s longer term psychological and cognitive development.<sup>26</sup> In poorer countries, Save the Children is also witnessing first-hand how the aftermaths of extreme weather events are forcing children into displacement and migration, exposing them to increased risks of violence, abuse, and neglect, and disrupting their access to education.<sup>27</sup>

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<sup>19</sup> Xu Z *et al*, [Impact of heat waves on children’s health: a systematic review](#) (2014) International Journal of Biometeorology, Vol. 58, 239–247. In the UK, a 2006 study by Leonardi *et al* found a large increase in calls to the National Health Service Direct for fever among children aged 0–4 years during heatwaves in Greater London and South East regions (see page 243).

<sup>20</sup> *Supra* notes 17 and 19.

<sup>21</sup> Patz JA *et al*, [Impact of regional climate change on human health](#) (2005) Nature, Vol. 438(17), 310–317, at page 311.

<sup>22</sup> WHO, [Quantitative Risk Assessment of the Effects of Climate Change on Selected Causes of Death, 2030s and 2050s](#) (2014) at page 44.

<sup>23</sup> Clemens V *et al*, [Report of the intergovernmental panel on climate change: implications for the mental health policy of children and adolescents in Europe—a scoping review](#) (2020) European Child & Adolescent Psychiatry.

<sup>24</sup> Goldmann E, Galea S, [Mental health consequences of disasters](#) (2014) Annual Review of Public Health, Vol. 35, at pages 169–183.

<sup>25</sup> *Supra* note 4, UN Human Rights Council, Analytical study, at paragraph 18.

<sup>26</sup> Noffsinger MA *et al*, [The burden of disaster: part I. Challenges and opportunities within a child’s social ecology](#) (2012) International Journal of Emergency Mental Health and Human Resilience, Vol. 14(1), 3–13.

<sup>27</sup> *Supra* note 1.

15. The above impacts are illustrative of the risks that children in Europe and other developed countries are likely to become exposed to, as extreme weather events such as wildfires and deadly heatwaves, such as the 2019 Western Europe heatwave, become increasingly frequent and more severe as a result of human-induced climate change.<sup>28</sup>
16. In addition, the indirect impacts on mental health of climate change-related effects – such as air pollution – are already evident in children from developed countries, including the Respondent States. A recent study in the UK conducted with London-based children found a correlation between exposure to higher levels of air pollution at the age of twelve and the later development of depression by the age of eighteen. In addition, children with the highest quartile of air pollution exposure were around three to four times more likely than those exposed to the lowest levels of pollution to be diagnosed with depression by the age of eighteen.<sup>29</sup>
17. The increasing awareness of the existential dimension of climate change has real potential to influence children’s wellbeing or impact upon their mental health.<sup>30</sup> Youth movements such as ‘Fridays for Future’ have resulted in millions of young people calling for greater action to save their planet from the climate crisis. Thus, children and young people provide leadership in the climate movement, demonstrating the value and dynamism that their ideas bring when their participation rights are properly exercised (as set out in further detail in section III).
18. However, a corollary of this is that learning about global problems, such as climate change, can trigger profound feelings of anxiety, helplessness and hopelessness. This is particularly true for children since they may find it more difficult to deal with these negative emotions and communicate their concerns on climate change.<sup>31</sup> Surveys conducted in developed countries, including some of the Respondent States, show that many young people are worried about how climate change will affect their futures<sup>32</sup>, and even believe that the world may end during their lifetime due to climate change and other global threats<sup>33</sup>.

### **III. SUBSTANTIVE RIGHTS OF CHILDREN ENGAGED BY CLIMATE CHANGE**

19. The 2020 HRC Resolution underlines a fundamental concern that the effects of environmental harm may undermine children’s full enjoyment of a vast range of rights enshrined in the United Nations Convention on the Rights of the Child (**UNCRC**) and reaffirms that its core principles – namely, a commitment to the ‘best interests’ of the child, non-discrimination, participation, survival and development – must “*provide the framework for all actions concerning children*”.<sup>34</sup>

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<sup>28</sup> Schiermeier Q, [Climate change made European heatwave up to 3°C hotter](#), Nature, 2 August 2019. Heatwaves are predicted to become more frequent and severe in cities such as Chicago and Paris, with large increases predicted for the western and southern United States and the Mediterranean region. See UNICEF, [The Challenges of Climate Change: Children on the front line](#) (2015), at page 18.

<sup>29</sup> Roberts S *et al*, [Exploration of NO<sub>2</sub> and PM<sub>2.5</sub> air pollution and mental health problems using high-resolution data in London-based children from a UK longitudinal cohort study](#) (2019) Psychiatry Research, Vol. 272, pages 8–17.

<sup>30</sup> *Supra* note 23.

<sup>31</sup> Ojala M, [How do children cope with global climate change? Coping strategies, engagement, and well-being](#) (2012) Journal of Environmental Psychology, Vol. 32(3), 225–233.

<sup>32</sup> UNICEF UK, [Climate change: Children’s challenge](#) (2013), at page 2.

<sup>33</sup> Sanson AV, Burke SEL, [Climate Change and Children: An Issue of Intergenerational Justice](#) (2020) (in Balvin N, Christie D, *Children and Peace*, Peace Psychology Book Series, Springer).

<sup>34</sup> *Supra* note 2, at page 2.

Child's best interests (Article 3, UNCRC)<sup>35</sup>

20. The child's 'best interests' principle, enshrined in [Article 3 UNCRC](#), provides *inter alia* that “*in all actions concerning children [...] the best interests of the child shall be a primary consideration*”. As a dynamic concept, application of this principle requires an assessment that is both relative and appropriate to the specific context.<sup>36</sup> Thus, the Court's consideration of context ought to be viewed in light of the specific dangers that children face due to climate change, and the significant body of scientific evidence suggesting these dangers are likely to be exacerbated in the event of insufficient action on climate change.<sup>37</sup>
21. As to when the 'best interests' principle is triggered, Article 3 is explicit that it applies to all actions, such as environmental and climate change legislation, regulation, policies and financing measures, that directly or indirectly affect children as well as other population groups – even if children are not the direct targets of the measure.<sup>38</sup> Moreover, where decisions “*will have a major impact*” on children, as is the case with climate change, “*a greater level of protection and detailed procedures to consider their best interests is appropriate*”.<sup>39</sup>
22. As to the broader scope of the principle, it has been noted that respect for and primacy of the child's best interests is threefold:<sup>40</sup>
- First, it is a substantive right as it gives any child the right to have their best interests assessed and taken into account as a primary consideration when different interests are being considered as part of decision-making (with the interests of children being a priority when there are other competing interests). This creates an intrinsic obligation for States<sup>41</sup>, is directly applicable (i.e., self-executing) and is capable of being invoked by children before a court.<sup>42</sup>
  - Second, it is a fundamental and interpretative legal principle. Where a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should prevail<sup>43</sup>, involving the application of the precautionary principle (see below).
  - Third, it invokes a procedural obligation on States to take those interests into account before policy is determined. Where a decision is made which will affect children, decision-makers must evaluate the possible positive and negative impacts on the child or children concerned.<sup>44</sup>

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<sup>35</sup> This principle has been referred to extensively in the Court's jurisprudence. See, for example: *Sahin v Germany* (App. No 30943/96), 8 July 2003, at paragraphs 39–41 and *Vavříčka and Others v. Czech Republic* (Applications nos. 47621/13 and 5 others), 8 April 2021 at paragraphs 287–288.

<sup>36</sup> Committee on the Rights of the Child, General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (29 May 2013) [UN Doc. CRC/C/GC/14](#), at paragraph 1.

<sup>37</sup> See, for example, the various studies and reviews referred to in section I above.

<sup>38</sup> *Supra* note 36, at paragraph 19.

<sup>39</sup> *Supra* note 36, at paragraph 20.

<sup>40</sup> *Supra* note 36, at paragraph 6.

<sup>41</sup> References to States throughout are to the signatories to the relevant human rights convention, as the context requires.

<sup>42</sup> *Supra* note 36, at paragraph 6(a). The latter aspect can be seen as regards a communication brought by Greta Thunberg and 15 other children before the United Nations Committee on the Rights of the Child in late 2019 and against five respondent States (three of whom – Germany, France and Turkey – are Respondent States to the Application) (*Chiara Sacchi & 15 Others v Argentina & 4 Others* (23 September 2019)).

<sup>43</sup> *Supra* note 36, at paragraph 6(b).

<sup>44</sup> *Supra* note 36, at paragraph 6(d).

Moreover, the justification of decisions affecting children should show that the children's 'best interests' principle has been explicitly taken into account. This means that States must explain what was considered to be in the children's best interests and how those interests have been weighed against other considerations.<sup>45</sup> This process should apply equally to decisions and actions related to climate change action and adaptation.

23. The precautionary principle<sup>46</sup> has been recognised on an international scale in environmental law since the 1992 Rio Earth Summit, and is included in various international treaties on environmental protection in different spheres.<sup>47</sup> In relation to environmental matters, it concerns measures that must be adopted in cases where there is no conclusive understanding about the impact that an activity could have on the environment. The Rio Declaration advocates for a wide interpretation of the precautionary principle: “[i]n order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, **lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation**”<sup>48</sup> (emphasis added).
24. The precautionary principle refers to the obligation to take steps to reduce or eliminate threats to the protection of fundamental human rights, even if the degree of threat is uncertain or unknown. It is further enshrined in the United Nations Framework Convention on Climate Change as requiring States to “take precautionary measures to **anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects**”<sup>49</sup> (emphasis added). In the context of climate change, interference with a child's best interests may sometimes not manifest until a later point. However, it is incumbent on States and courts alike to abide by the precautionary principle in order to uphold the child's best interests before such risks arise. The intergenerational equity principle further “places a duty on current generations to act as responsible stewards of the planet and ensure the rights of future generations to meet their developmental and environmental needs”.<sup>50</sup>
25. Therefore, approaching climate change through the lens of a child's best interests requires the Court to adopt a precautionary approach to the issues presented before it. This necessarily means that the Court should not apply an exacting standard to the analysis and assessment of evidence concerning ECHR breaches presented by children in an application such as this.

#### The right to life, survival and development (Article 6, UNCRC)

26. Children's rights under [Article 6 UNCRC](#) are directly threatened by climate change. Climate change has increased the frequency and intensity of weather-related disasters.<sup>51</sup> By 2030, climate change is expected to result in nearly 95,000 additional deaths annually due to undernutrition in children aged five and under, and an additional 24 million undernourished children by 2050.<sup>52</sup> It is estimated that

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<sup>45</sup> *Ibid.*

<sup>46</sup> This Court also recognised the principle in *Tătar v Romania* (Application no. 67021/01), 27 January 2009.

<sup>47</sup> See Colombia [Advisory Opinion](#) OC-23/17, Inter-American Court of Human Rights, from paragraph 175.

<sup>48</sup> [Rio Declaration](#) on Environment and development 1992, Principle 15, A/CONF.151/26 (Vol. I).

<sup>49</sup> [United Nations Framework Convention on Climate Change](#), Article 3(3).

<sup>50</sup> *Supra* note 4, UN Human Rights Council, Analytical study, at paragraph 35.

<sup>51</sup> *Supra* note 4, UN Human Rights Council, Analytical study, at paragraph 7.

<sup>52</sup> *Supra* note 22.

half a billion children live in flood prone areas, 160 million children are exposed to severe drought<sup>53</sup> and 115 million children are exposed to cyclones.<sup>54</sup> Children (and future generations) will bear a disproportionate share of the impact of those disasters, both in the immediate and the longer term.

27. Further, as per section I, many of the main threats to child survival, such as infectious disease, are highly sensitive to climatic conditions which are expected to worsen due to insufficient action on climate change.

Right to health and to health-sustaining conditions (Article 24 and Article 24(2)(c) UNCRC)

28. As regards [Article 24 UNCRC](#), the Committee on the Rights of the Child (CRC) acknowledges that “[e]nvironmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children’s health and exacerbates health disparities. States should, therefore, **put children’s health concerns at the centre of their climate change adaptation and mitigation strategies**”<sup>55</sup> (emphasis added). As human beings in their early stages of physical and cognitive development, children are uniquely vulnerable to the health consequences of the climate crisis, including increased risk of disease as explained above.
29. Children’s right to health is infringed when health-sustaining conditions such as clean air and access to sufficient safe drinking water<sup>56</sup> are compromised by climate change.

Right to education (Article 28 UNCRC)

30. The effects of climate change may impact children’s access to, and quality of, education.
31. First, children’s access to education may be severely disrupted or negated when schools and other infrastructure are damaged or destroyed by climate-related disasters, with potentially life-long consequences undermining their opportunities to transform their lives and pave the way for better health, work and livelihoods. Around half of the 75 million children who have their education disrupted each year do so from climate and environmental threats.<sup>57</sup>
32. Second, climate change can also affect a child’s ability to learn in qualitative terms. For example, children who have experienced a climate-related crisis are found to be more likely to have higher rates of absenteeism and lower levels of educational attainment.<sup>58</sup>
33. Third, a child’s right to education under [Article 28 UNCRC](#) may be interpreted widely as the right to receive accessible child-, gender- and age-appropriate information on the climate and environmental crisis to ensure that children have the necessary knowledge to be active agents in this sphere in order to further the commitment in the 2030 Agenda. The [2015 Paris Climate Agreement](#)<sup>59</sup> also stresses the importance of climate change education, training and participation.

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<sup>53</sup> UNICEF, [The climate crisis is a child rights crisis](#) (6 December 2019).

<sup>54</sup> UNICEF, [Unless We Act Now: The Impact of Climate Change on Children](#) (23 November 2015) at page 34.

<sup>55</sup> Committee on the Rights of the Child, General Comment No. 15, The right of the child to the enjoyment of the highest attainable standard of health (Art. 24) (17 April 2013), [UN Doc. CRC/C/GC/15](#), at paragraph 50.

<sup>56</sup> UNICEF, [Water and the global climate crisis: 10 things you should know](#) (18 March 2021).

<sup>57</sup> Theirworld, [Safe Schools: The Hidden Crisis – A framework for action to deliver Safe, Non-violent, Inclusive and Effective Learning Environments](#) (2018), at page 50.

<sup>58</sup> Chuang E et al, [How natural disasters undermine schooling](#) (2018) Brookings Institute.

<sup>59</sup> See Article 12, adopted in 2015 by the conference of the Parties to the UN Framework Convention on Climate Change.



34. In its Colombia Advisory Opinion, the Inter-American Court of Human Rights held that States have the obligation to ensure the right of access to information recognised in [Article 13 of the American Convention on Human Rights](#) in relation to possible damage to the environment.<sup>60</sup> Further, the decision in *Guerra & Others v Italy*<sup>61</sup> before this Court, based on a breach of the right to information in relation to a chemical plant leak, was cited in the Colombia Advisory opinion as establishing that “authorities who engage in hazardous activities that could involve consequences to the health of the individual have the positive obligation to establish an effective and accessible procedure so that members of the public can access all relevant and appropriate information and are enabled to assess the danger to which they are exposed”.<sup>62</sup>

#### **IV. PROCEDURAL RIGHTS ENGAGED BY CLIMATE CHANGE**

35. Save the Children commissioned a study on the views of 1,606 children across 60 countries on the topic of exercising their civil and political rights. Although 79% of those children believed they *would be listened to* by adults who could bring about change, only 63% felt their views would be *taken seriously* and only 62% felt their views *would be acted upon*.<sup>63</sup> This demonstrates a clear tension between the overwhelming desire of children who want to see change, and the confidence that children have in ensuring that their concerns are met with action.

36. This tension is to be contrasted with the 2030 Agenda for Sustainable Development, which makes clear a commitment by UN Member States to recognise children as “agents of change”<sup>64</sup> and provides an opportunity to accelerate the realisation of children’s rights. Save the Children has worked extensively across the world to support children to exercise their rights to speak out, participate, and demand change, as enshrined in the UNCRC, including in relation to climate change.<sup>65</sup> Children intimately understand the issues impacting their lives and can devise sustainable and innovative solutions.<sup>66</sup>

37. Children’s right to be heard and to express their views freely, and the subsequent right for those views to be given due weight, is enshrined in [Article 12 UNCRC](#). Like the child’s ‘best interests’, it is one of the four core principles underlying the UNCRC. According to the CRC, the participation of children “should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children’s lives”.<sup>67</sup> In the context of climate change, the CRC recognises the growing power of children voices and notes that children “should be consulted in the formulation of legislation and

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<sup>60</sup> *Supra* note 47, at paragraph 242(f).

<sup>61</sup> *Guerra & Others v Italy* (Application No. 14967/89) 20 May 1998 (116/1996/735/932).

<sup>62</sup> *Supra* note 47, at paragraph 215.

<sup>63</sup> Save the Children International, Centre for Child’s Rights and Queen’s University Belfast, [Enabling the exercise of civil and political rights: The views of children](#) (2016).

<sup>64</sup> United Nations General Assembly Resolution, Transforming our world: the 2030 Agenda for Sustainable Development (25 September 2015) [UN Doc. A/RES/70/1](#), at paragraph 51.

<sup>65</sup> For example, through the Red Alert Campaign in Asia, Save the Children is supporting children to speak out on the climate crisis and share their demands with decision-makers.

<sup>66</sup> Joining Forces, [Children’s Right To Be Heard: We’re Talking; Are You Listening?](#) (2021), at page 5.

<sup>67</sup> Committee on the Rights of the Child, General Comment No. 12 on the right of the child to be heard (20 July 2009) [UN Doc. CRC/C/GC/12](#), at paragraph 13.

*policy related to these and other problem areas and involved in the drafting, development and implementation of related plans and programmes”.*<sup>68</sup>

38. Decisions on climate change at the local, national and international level will impact the lives of children now and continue to do so in the longer-term. Children will also in the future bear the adverse social, economic and environmental impacts of non-inclusive and inadequate climate change decision-making today. Therefore, children have the strongest interest in environmental matters, and so their meaningful participation and representation in climate change decision-making and adaptation must be ensured if their Article 12 rights are to be upheld.<sup>69</sup>
39. Article 12 UNCRC is also closely linked with other procedural rights and freedoms including freedom of expression ([Article 13 UNCRC](#)), freedom of thought, conscience and religion ([Article 14 UNCRC](#)), freedom of association and peaceful assembly ([Article 15 UNCRC](#)), and the right to access to information from the media ([Article 17 UNCRC](#)). Fulfilment of those rights and freedoms is a crucial prerequisite for the effective exercise of the right to be heard. Further, under the UNCRC, children also have an implicit procedural right to an effective remedy when their rights are violated.<sup>70</sup>
40. In this context, the 2020 HRC Resolution emphasises that States have “*a duty to ensure effective remedies for violations of the rights of the child, that children have access to information in child-friendly formats, and that every child capable of forming his or her views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child, including in environmental decision-making processes that may be relevant to his or her life*”.<sup>71</sup>

## **V. CONCLUSION**

41. The climate crisis is undeniably an intergenerational child rights crisis which poses a grave threat to the survival, development, education, protection and other rights enshrined by the UNCRC, both to children today and in the future. Insufficient action on climate change from generation to generation represents a violation of the principle of intergenerational equity. Climate change is happening at an alarming pace and, without urgent action, children of present and future generations will bear the greatest burden. Moreover, the outcome of this Application is likely to influence other regimes where international law has been largely modelled upon the UNCRC<sup>72</sup> or where the UNCRC has long been influential in the existing jurisprudence<sup>73</sup>.

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<sup>68</sup> *Ibid*, at paragraph 122.

<sup>69</sup> *Supra* note 28, UNICEF, *The Challenges of Climate change*, at page 65.

<sup>70</sup> See Committee on the Rights of the Child, General Comment No. 5 on general measures of implementation of the Convention on the Rights of the Child (27 November 2003), [UN Doc CRC/GC/2003/5](#), at paragraph 24.

<sup>71</sup> *Supra* note 2, at page 4.

<sup>72</sup> E.g., the [African Charter on the Rights and Welfare of the Child](#). See, Ekundayo O, [Does the African Charter on the Rights and Welfare of the Child \(ACRWC\) only Underlines and Repeats the Convention on the Rights of the Child \(CRC\)’s Provisions?](#) (2015) International Journal of Humanities and Social Science Vol. 5, No. 7(1), 143–157.

<sup>73</sup> E.g., the [American Convention on Human Rights](#). See the dictum of the Inter-American Court of Human Rights in [Villagran-Morales et al v Guatemala](#), Judgment of November 19, 1999 at paragraphs 194–196.