

The Right to a Healthy Environment

Comparative Approaches to Support Children's Participation and Access to Justice

Francisca Aravena Asencio
Cynthia Brain
Mercy Tochukwu Christopher
Kira Davidson
Jeannie Morgan
Louis Williams

18 May 2021
Human Rights Clinic



THE UNIVERSITY of EDINBURGH
Edinburgh Law School



Key Aspects of the Report

The importance of children's right to a healthy environment,
impacting every area of children's lives



What fulfilment of the right to a healthy environment entails - *enhancing participation and access to justice*

Broad recommendations to inspire national institutions and organisations to act on behalf of children and young people

After the webinar, we will better understand...

The *importance of a healthy environment* to fulfil human rights

opportunities for placing children's rights at the centre

How it *impacts national policies* and practice

The *relationship* between children's rights and a healthy environment

What does a 'healthy environment' mean?

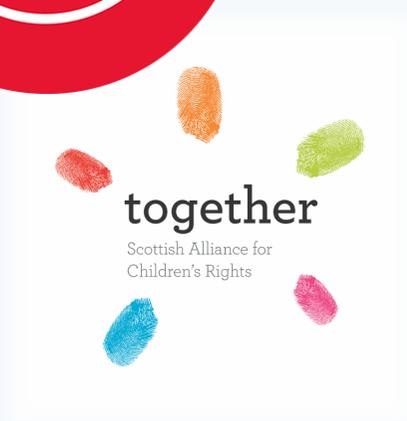
As enshrined by the UN Convention on the Rights of the Child (UNCRC), realising the right to a healthy environment means that children and young people are thriving, safe, healthy, and developing in order to fulfil their greatest potential.



Why focus on Right to a Healthy Environment?

- Insufficient global governmental response to rampant environmental destruction
- Children are *uniquely vulnerable* to the impacts of environmental harm
- Comparative research into State practice demonstrates need to enhance children's participation in environmental issues
- *Right to be heard* is gaining importance as children are recognised as critical agents of change

A Timely Opportunity for Scotland to Take the Lead



- Harnessing current national (and international) momentum in promotion and protection of children's rights and a healthy environment
- Supporting the recent adoption of UNCRC incorporation bill
- Progressing forward in-line with acceptance of HR Taskforce report and recommendations

Our approach: Link to National Practice

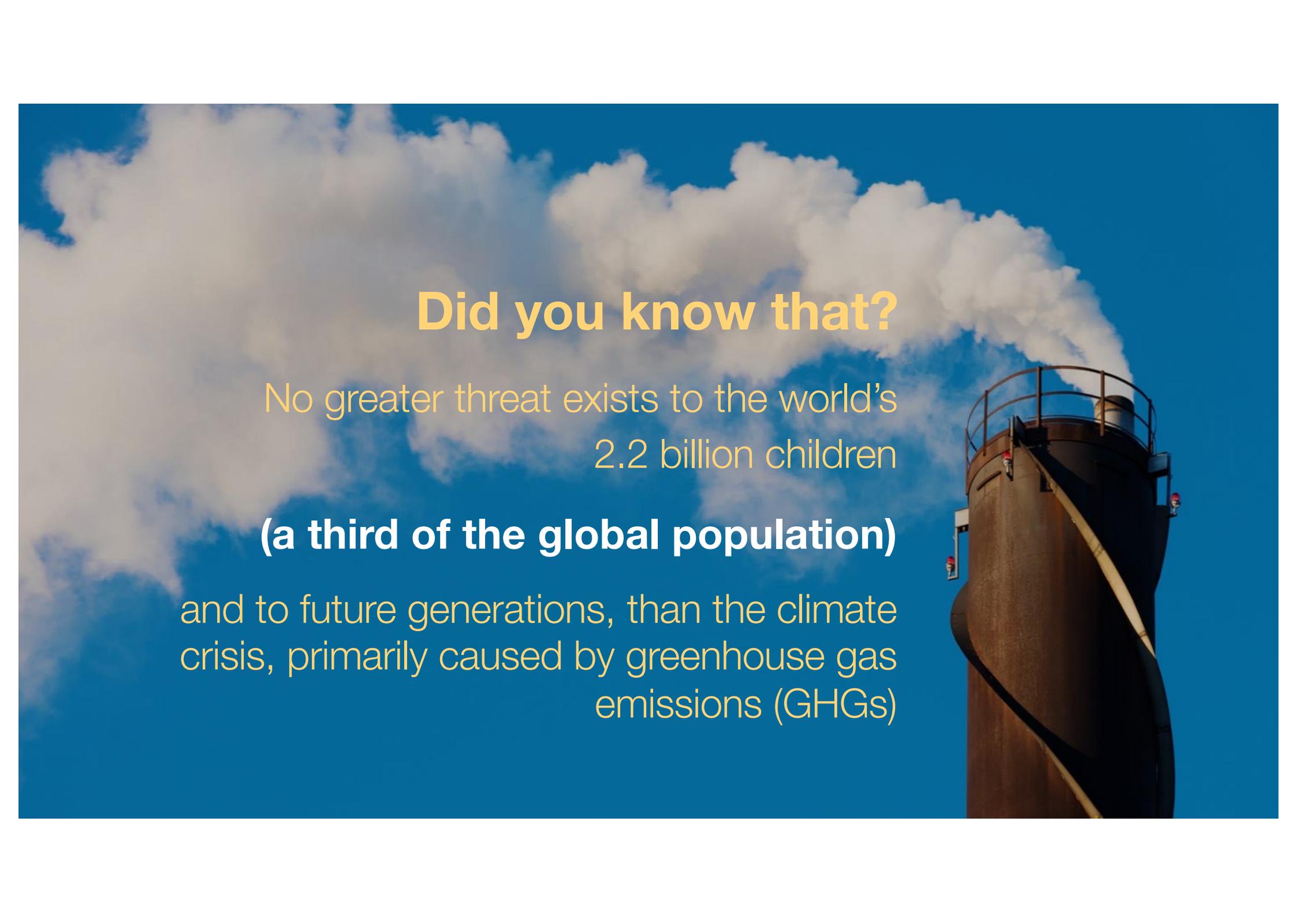
- Comprehensive legal and policy analysis of global experience and guidance
- Identification of concrete opportunities for Scotland to take action to ensure a healthy environment for all citizens
- Links to national practice summarised in 10 key recommendations

Link to National Practice: Involving Children in Environmental Planning

Scotland currently uses Children's Rights and Wellbeing Impact Assessments (CRWIAs) to 'identify, research, analyse and record the anticipated impact of any proposed law, policy or measure on children's human rights and wellbeing,'¹⁰⁸ but these assessments do not consider environmental factors. Consequently, this practice overlooks the holistic relationship between the environment, children, and their rights. **Continuing the momentum in child-rights-based decision-making at the institutional level, Scotland should amend relevant legislation to ensure environmental impacts on children's rights are specifically assessed within project planning processes and EIAs.**¹⁰⁹ It is also crucial that environmental factors are incorporated into the current CRWIAs.

National Practice from a Child's Rights Perspective

- Continued and increased measures for proactively involving children in national environmental decision-making
- Formally recognising children and young people as empowered agents of change
- Holding businesses and non-State actors accountable for environmental harms affecting children
- Enhanced and child-friendly access for children to the Scottish legal system, and appropriate remedies for environmental and climate change cases



Did you know that?

No greater threat exists to the world's
2.2 billion children

(a third of the global population)

and to future generations, than the climate
crisis, primarily caused by greenhouse gas
emissions (GHGs)

Threats to a Healthy Environment

“Full realisation and enjoyment of fundamental human rights ultimately hinges on a healthy environment”



Of 5.9 million deaths of children under 5 in 2015, the World Health Organisation (WHO) estimated that more than **1.5 million deaths could have been prevented** ‘through the reduction of environmental risks such as air pollution, unsafe water, sanitation, inadequate hygiene, and toxic chemicals’.

Impacts of Environmental Harm on Children

- Drastic temperature changes + diminished quality of air, water, food = *severe, far-reaching, and irreversible implications* for long-term health, development, and overall well-being
- Have little or no control over the environmental threats faced, lacking knowledge and ability to protect themselves
- Those in “vulnerable situations” at greatest risk, often intersecting among multiple dimensions
- Disproportionately affected by exploitation and environmental destruction from business activities

International Binding Legal Frameworks

- States obliged to respect, protect, and fulfil human rights in environmental context
- Binding obligations ensured in more than 80% UN Member States*
- Legally recognised in international environmental law, e.g., Stockholm Declaration, Rio Declaration, Aarhus Convention

*Via national legislation, jurisprudence, and regional treaties

Directly related to fundamental rights

Right to Life

Right to Health

Right to Water

Right to Food

Children's Rights and the Environment

Recognised by both international human right bodies and jurisprudence

UNCRC is one of the few human rights instruments explicitly imposing positive obligations on States to protect the environment.



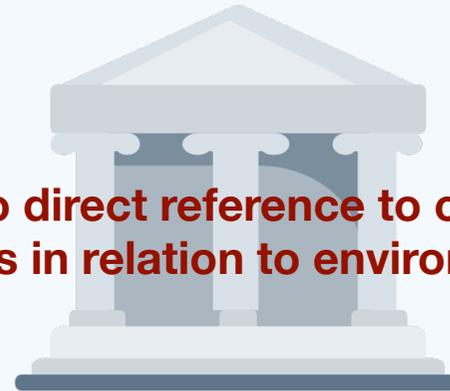
Hard Law versus Soft Law Frameworks

States are obligated to
“protect” human rights



Primary duty bearer, international binding law e.g., UNCRC, to prevent environmental harm from businesses

Businesses responsible for
“respecting” human rights



GAP: no direct reference to children’s rights in relation to environment

Mostly soft law non-binding voluntary “guidelines”, and compliance to regulations and reporting e.g., UNGP, OECD, UNGC

Environmental Law and the Precautionary Approach

A guiding principle of Environmental Law

- Ensures steps are taken in the present to prevent future environmental harm

It is essential for States to apply the precautionary approach with a child's right perspective to ensure a healthy environment for the future



Child Protective Approach vs. Empowerment Approach

Protection:

- Hinders capacity to protect themselves
- Undermines the competencies of their abilities
- Neglects their abilities to be problem solvers

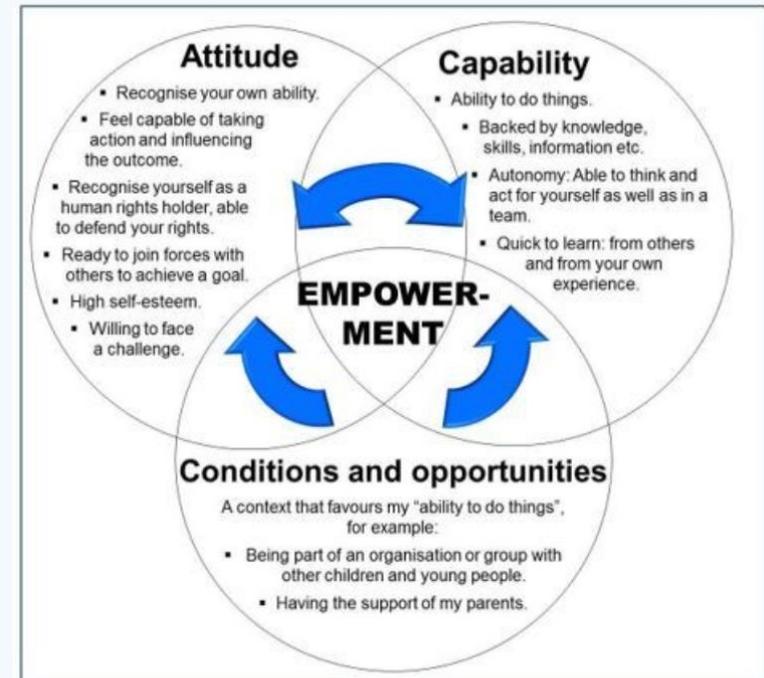


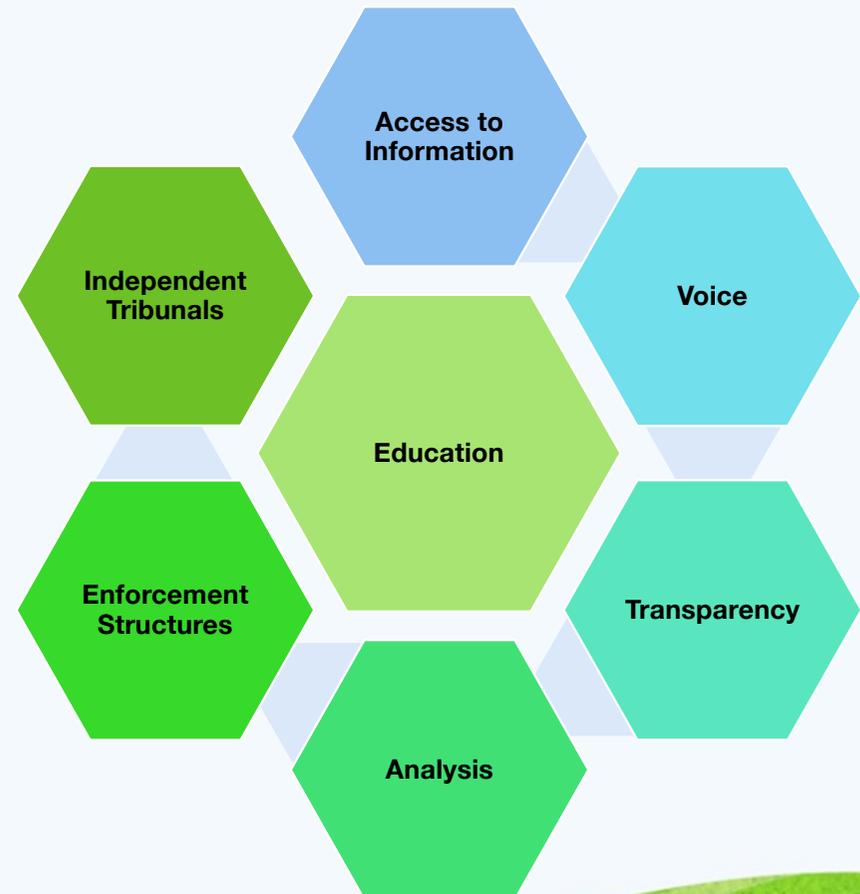
Figure 1: The CESESMA model of Empowerment

(CESESMA/UNN, 2010: p. 44; translated from Spanish in Shier, 2015: p. 213)

Children's Right to Participation

Children as “*CRITICAL AGENTS OF CHANGE*” in environmental affairs.

The right to participation has been recognized by the UDHR and codified by the ICCPR and the UNCRC.



Avenues for Children's Participation

There are 4 areas in which the participation of children in environmental matters must be ensured:

1. Environmental education
2. Consideration of the views of children
3. Information and assessment
4. Provision of effective remedies

These avenues for children's participation must meet 9 criteria in order to be meaningful:



Right to Education in Environmental Issues

- **1972 Stockholm Declaration:** education in environmental matters is essential for the younger generation
- **UNCRC**, article 29(1)(e): environmental education should be directed to 'the development of respect for the natural environment'
- **CRC in General Comment No. 1:** education should include 'respect for the natural environment [...] and encompass both national and international problems'
- **General Comment No. 16:** States and the private sector must be given concrete guidance on how they can ensure effective education



Right to be Heard in Environmental Issues

- **Article 12 of the UNCRC:** States are obligated due consideration to the distinctive perspectives and experiences of children.



- **Reduction of Voting Age Bill (2015)**, the most basic form of democratic participation is unavailable to children in Scotland prior to the age of 16

- Children and young people are underrepresented within the political decision-making process

- **Specific procedural** means can also enhance the participation of children in environmental decision-making processes.

Right to Information in Environmental Issues

- **UNCRC, article 13:** children have the right to seek and receive information
 - This right allows children the ability to effectively exercise their right to participation, especially in regards to a healthy environment.
 - States have an obligation to collect, update, and protect information gained through environmental assessments and guarantee public access.
- Good practice: **Serbia's Ecoregister**, a user-friendly public online database that allows users to access relevant information on the environment based on search criteria



Summary of Recommendations: Enhancing Children's Participation

1. Employ a maximalist approach to engage the perspectives of children from diverse and intersectional backgrounds.
2. Develop environmental education through education initiatives and public forums.
3. Create comprehensive guidelines for gathering, incorporating, and sharing children's input in decision-making.
4. Reform factors assessed within CRWIAs and EIAs.

Access to Justice

- Access to justice is an essential aspect of the right to participation.
- It is crucial where states have failed to prevent and mitigate environmental harm.
- States have a duty to ensure the right of children to:
 - (a) Equal and fair access to justice
 - (b) Prompt and effective reparation
 - (c) Access to information on justice procedure and mechanism

Challenges of Accessing Justice

Children struggle to access judicial remedy for environmental harms due to the following reasons:

Barriers	Meaning	Example
Legal Standing	This requires claimants to establish injury caused by a particular conduct. It also limits the competence of children to stand in court to establish sufficient remediable interest in proceedings.	Columbia - Future Generations v Ministry of Environment
Deficits in legislation	Gaps in legislation that allow business actors and states to evade liability for environmental harm.	Canada - Mathur v Ontario
Causation of harm and burden of proof	The requirement for a claimant to prove that risk suffered was directly caused by the action or inaction of a state/business actor, and that such risk was foreseeable to the state and/or business actor.	Netherlands - Urgenda Foundation v state of Netherlands

Comparative Approaches to Access to Justice

Case	Claimant	Claim	Judgement
Future Generations v. Colombian Ministry of the Environment	25 Children	Rights to a healthy environment, life, and health threatened by deforestation of the Amazonas.	Children have a legal right to seek remedy in court where their rights are impacted by climate change and environmental harm.
Urgenda Foundation v. the state of Netherlands	Urgenda Foundation and 900 Dutch citizens including children.	Failure by the Dutch government to take sufficient action to prevent climate change.	Climate change is a human rights issue that places a positive obligation on state. In climate change cases, the burden of proof is reduced to 'serious risk' instead of the 'imminent risk' principle.
Mathur v. Ontario (Canada)	7 young people	Failure of government to set a more stringent GHG target, resulting in violation of the rights of youth and future generations.	The state has a positive obligation to mitigate climate change and citizens have a cause of action in challenging the actions of states in that regard.

Summary of Recommendations: Enhancing National Access to Justice

1. Strategic use of public interest litigation to obtain remedy for children where the legal standing of children in court might be challenged.
2. Right to seek remedy for environmental harm should be recognized in law.
3. Provision of information on business activities that will help establish causation.
4. Climate change litigation should adopt a human rights approach.



Non-judicial Mechanisms

Different avenues for justice beyond the judiciary

1. Participation in the Public Sphere

- International “School Strike for Climate Action” movement

2. Grievance mechanisms in the Business Sector

- CRBP, Principle 1



Roles of Relevant Actors

States:

- Apply international and national standards for environmental protection
- Provide legal framework and jurisprudence
- Regulates government information the public, especially children, have access to

Businesses:

- Abide by soft law treaties and practices
- Ability to influence decision makers
- Ability to impact positive change through accountability in environmental measures

Communities:

- Empower children to participate or engagement in local affairs
- Provide environmental education or information in schools
- Engage and promote children's activism in environmental protections

Next Steps for Scotland

Legally recognising the right to a healthy environment



Publish and distribute governmental information understandable by children



Update Scottish CRWIAs to include EIAs



Incorporate environmental and climate change education into the Scottish education system



Establish concrete governmental guidelines to better incorporate the voices of children, especially for private actors



Create an effective forum for children to discuss their right to a health environment, environmental issues, and protective environmental measures



Thank you for joining us today!

A short question session and discussion follows.
We welcome any questions you may have.

The full policy report will be available on Together's website
at: <https://www.togetherscotland.org.uk>

Please follow Together on social media and sign up to their newsletter
<https://www.togetherscotland.org.uk/membership/subscribe-to-our-e-newsletter/>)

