

Analysis of Domestic Legal Framework based on International Law Towards Children's Environmental Protection

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ABSTRACT

Environmental damage and climate change consequences are affecting the health and well-being of many people throughout the world. However as compared to adults, children are more susceptible to environmental hazards because of their unique physiological, developmental and metabolic needs causing them to face a greater risk if exposed to pollution. While imperative actions are persistently being taken by countries globally to address environmental and climate change concerns, confronting these issues in the era of COVID-19 could be more complex due to implications and unprecedented challenges associated with the pandemic. In relation to children, while they are not a category at risk from a medical viewpoint, they are nevertheless not standing on an equal footing in facing environmental consequences of the pandemic effects. In responding to the interlinkages of COVID-19 crisis, environmental degradation, and children's protection, the article examines provisions of the Child Act 2001 which is the most important legislation in Malaysia on children. The article then examines related policies and international law which provide the foundation of the objectives of the Act. It is imperative that, during the time when new threats to children's wellbeing keep occurring, policies and international law principles are revisited and comprehended to support the law in securing protective actions for children and in constructing a new normal for the purpose of sustainability.

Keywords: Policy; International Law; Children; Environment; COVID-19

INTRODUCTION

Even before the emergence of COVID-19 crisis in 2020, nations worldwide were facing a different kind of global challenge in the form of environmental and climate change threats which pressured countries to undertake measures to respond to sobering social and ecological impacts associated with the threats. Over the years the destruction of forests, depletion of natural resources and decline of biodiversity continue to increase. According to the United Nation's Annual Environmental Report¹, in the year 2019, the world has witnessed environmental degradation in the form of massive wildfires, deadly floods and possible extinction of 1 million plant and animal species. United Nations Environment Programme (UNEP) in its most authoritative publication on the state of global environment, the Global Environmental Outlook², has identified climate change, air pollution, loss of biological diversity, land degradation and water scarcity as growing problems that need to be urgently addressed. From the perspective of social wellbeing, environmental issues have caused various health impacts to the society. It has been attested by the World Health Organization (WHO) and

UNEP that environmental consequences associated with economic decisions attribute to nearly 25% of mortalities worldwide.³ This includes 7 million deaths annually due to bad air quality, whereas poor water quality has been linked to the death of 3.5 million people.⁴

Notwithstanding that human at large is susceptible to the outcomes of environmental and climate change harms, children would be disproportionately affected⁵ and bear the brunt far longer than adults.⁶ It has been reported that air pollution, water contamination and exposure to toxic substances have caused 1.5 million deaths of children under the age of 5 every year⁷, and contributed to disease, disability and early mortality throughout their life.⁸ Specifically, air pollution itself is the factor towards the death of around 600,000 children under the age of 5 annually.⁹ It has been highlighted by the Human Rights Special Rapporteur¹⁰ that major sources of air pollution affecting children include emissions from factories and vehicles, as well as indoor sources such as the household use of wood, coal, and other solid fuels. As the WHO has conveyed, indoor and outdoor air pollution have led to health problems such as pneumonia and bronchitis

to those under 5, whereas 15% mortality of similar age group was due to respiratory infections.¹¹ As compared to adults, there are several reasons that make children to be more vulnerable. According to the UNICEF, these include their immune system which is still developing, causing them to face a higher risk of respiratory infection and less capacity to fight them.¹²

Young people can also be affected by common environmental hazard such as water pollution which is the outcome of unsafe sanitation practices. The WHO has estimated an annual death of 350 000 children due to diarrhea, a sickness of which could be prevented by better access to clean water, sanitation, and hygiene.¹³ The WHO further highlighted that illness due to contaminated water can affect their physical and cognitive development.¹⁴ Another grave environmental issue impacting children is climate change. While this crisis is causing widespread consequences on all parts of society, it is a great concern that young people will suffer more severely as compared to adults.¹⁵ At present, outcomes of global warming such as extreme weather patterns, water insecurity and infectious diseases are harming them in many ways. It has been indicated by the UNICEF that “infants and small children are more likely to die or suffer from heatstroke because they are unable to regulate their body temperature and control their surrounding environment”.¹⁶ As a whole, the view of Executive Director of UNICEF has encapsulated the seriousness of climate impacts when he said that “there may be no greater, growing threat facing the world’s children – and their children – than climate change”.¹⁷

In Malaysia, consequences of environmental degradation and pollution on children are reaching alarming levels and causing serious concerns.¹⁸ For example, Abdul Rahman et al¹⁹ and Ismail et al²⁰ have linked exposure to ambient air pollution with respiratory diseases on Malaysian children. Whereas studies to investigate the health effects of haze pollution have shown that poor air quality can be associated with increased mortality and hospital admissions, especially for respiratory related illness which is a common cause of hospital admissions among children.²¹ The hazardous pollution of the Kim Kim River in Johor, Malaysia which happened in 2019 is another example of environmental incident that has caused adverse health outcomes.²² During this incident, it was found that health of the residents, especially children were seriously affected due to exposure to hazardous gaseous emission

such as benzene, acrolein, acrylonitrile, hydrogen chloride, methane, toluene, xylene, ethylbenzene and d-limonene.²³ Consequently, this incident had affected about 6,000 people, most of which were children, and hospitalising 2,775. As the number of those affected kept growing, over 100 nearby schools were ordered to be closed by the Education Ministry to prevent further health consequences.²⁴

From these pollution incidences, it can be construed that the implications of environmental threats have gone far beyond impacts on children’s health. In fact, these impacts are challenging the essence of their rights as enshrined by the Convention on the Rights of the Child which include that relating to their survival.²⁵ The growing evidence of the linkage between children’s wellbeing and pollution means that there is a legal obligation on the policy maker to review the law to safeguard them from environmental consequences.

Amid the struggle to deal with environmental issues, it is a concern that the COVID-19 pandemic which is unprecedentedly causing economic, health and social disruption would create new challenges, especially towards children.²⁶ The Coronavirus outbreak has been declared by the WHO as a “Public Health Emergency of International Concern” and considered it to be a global pandemic.²⁷ The number of reported cases and deaths from COVID-19 continues to rise severely. As of 5 October 2021, over 235 million people from more than 200 countries have been infected, with over 4.8 million deaths reported to the WHO.²⁸

From one perspective, the consequences of the pandemic which limit economic activities, consumption, and mobility have managed to reduce emission of pollutant and natural resources, resulted in the improvement of environmental quality in some areas.²⁹ However, while the lockdowns have contributed to the decreasing of pollution³⁰, there is no absolute certainty that this improved situation will be long lasting. The WHO expects that these positive changes are only temporary. Scientific findings on air and water quality during pandemic are indicating that the COVID-19 crisis will only have negligible impacts on the environment as compared to the amount of carbon and other pollutants that have been released over the past hundreds of years.³¹ Similar concern has been echoed by the secretary-general of Environment and Water Ministry Malaysia, Datuk Seri ZainiUjang, who was worried that when the economy reopens after the end of the lockdown, post pandemic pollution would resurface. He added

that pollutants remain anthropogenic even during the pandemic as evident from river water quality monitoring result which showed a significant increase in the average daily concentration of total suspended solids after the movement control order was lifted.³²

From environmental protection's outlook, the pandemic has revealed the vulnerability of the current legal system in managing impacts of pollution or climate change on human health including that of children.³³ It is evident from the finding of a previous study that children's health protection from environmental harms were particularly overlooked or otherwise given limited attention within the law.³⁴ Specifically, despite the existence of legislation on the protection of public health from pollution such as the Environmental Quality Act 1974, its provision is general in nature, and does not specifically address children's concerns.³⁵ There is no law available to safeguard their health from household pollution at home, or indoor air contamination at school, or other type of hazard on their natural surroundings.³⁶ Thus, at this juncture, the pandemic is providing a glaring perspective of future consequences of environmental and climate change impacts on the young people. In the long run, it is a concern that commitments towards the environment would be more difficult owing to implications and unprecedented challenges associated with the pandemic unless drastic actions are taken fast.³⁷

In responding to the interlinkages of COVID-19 crisis, environmental degradation, and children's protection, the article examines relevant law, policy and international convention relating to them. This article specifically highlights the position of the Child Act 2001, which is the most comprehensive legislation in Malaysia, and examines the sufficiency of the Act in protecting children from harms associated with environmental and climate change impacts. Against the backdrop of the COVID-19 crisis, this article then examines national policy and international law provisions on children to identify the basis for the re-interpreting and broadening of the scope of the Act to warrant safeguarding the younger people which is the weakest groups of the society. The article proposes that, ensuring adequate protection to children from an ecological dimension requires provisions of the Child Act to be re-evaluated and enhanced based on the spirit of national policy and international law.

There are ways in which legal preconditions can be established to meet challenges that arise from environmental damage. This include having

a change of perspective by way of giving a greater focus on the interlink of environmental and children's protection.³⁸ Even though the Child Act contains important limitations which have already been identified by a previous study³⁹ the Act can still be treated as an essential tool to safeguard young people from aspects of the environment and climate change harms particularly through a broader interpretation of its provisions on the matters. For this purpose, the article examines the most important international instrument on children, namely the Convention on the Rights of the Child. It also examines the National Child Policy, National Child Protection Policy, National Action Plan on Children, and National Family Policy. In the current pandemic situation where threat to children caused by ecological destruction can take on such dimensions, it is the right time to re-visit the objectives of policy and international law, and to comprehend their scope to support the law in securing protective actions for children and in constructing a new normal for the purpose of sustainability.

THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The United Nations Convention on the Rights of the Child (CRC) is an international treaty that aims to protect children through rights relating to nationality, freedom of speech, access to healthcare and education, and freedom from exploitation, torture, and abuse. The term child is defined by the CRC as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." Until now, 193 countries including Malaysia have ratified the CRC which signalled the global recognition of various legitimate rights of children, and has been sealed through domestic instruments such as national law and policy.⁴⁰ Nations that form state parties have agreed to take appropriate legislative, administrative, and other measures to ensure that all children in their jurisdiction have the rights set forth in the Convention. For Malaysia, the implementation of domestic law is guided by the CRC as stated in its preamble, that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". There are four guiding principles set by the CRC which consist of different categories of rights emphasising on aspects of children's vulnerabilities and special need. They are: Article 2 on principle of non-discrimination;

Article 3 on principle of best interests of the child; Article 6 on rights to life, survival and development; and Article 12 on right to participate.

Apart from the foundational rights above, the CRC also includes a wide range of other substantive and socio-economic rights (see Table 1 below). They are rights relating to civil and political as found in Articles 7 & 8 on rights to name and nationality;

Article 13 on freedom of expression; Article 14 on religion; Article 15 on association and assembly; and Article 16 on the right to privacy. Whereas rights relating to economic, social, and cultural are embodied within Articles 24 & 25 on rights to health; Article 26 on right to social security; Articles 28 & 29 on right to education; and Article 31 on right to play.

TABLE 1. Substantive and Socio-economic Rights of the CRC

Article 7	“rights to a name at birth and acquisition of nationality,
Article 8	preservation of identity,
Article 13	rights to freedom of expression,
Article 14	rights to freedom of thought, conscience and religion,
Article 15	right to form an association,
Article 16	rights of protection from interference with privacy, family, home and correspondences,
Article 24	State’s obligation to provide health care services to children,
Article 25	rights to be placed in an institution (either for care, protection or rehabilitation),
Article 26	rights to benefit from social security including social insurance,
Article 28	rights for free and compulsory education,
Article 29	child’s education to be directed to the child personality and to the child fullest potential,
Article 31	rights to leisure, play and participation in cultural and artistic activities.”

Source: Convention on the Rights of the Child

Within the CRC, there are several principles that could form the basis for the law in upholding children’s protection from environmental threats. Focus of this discussion is on rights which are enumerated in Articles 2, 3, 6, 12 and 24. Analysis of these provisions are provided in the later part of this article based on literal understanding of their normative prescriptions, as well as in accordance with the interpretation of the Committee on the Rights of the Child (the Committee). Comprised of independent human rights experts, the Committee which is established by virtue of Article 43 of the CRC, monitors states parties’ implementation of the CRC.⁴¹ It also assumes the responsibility of examining states parties progress toward children’s rights protections under the CRC.⁴²

It is an accepted notion that while environmental and climate change harms play a minor part within the CRC itself, the Convention nevertheless provides the premise towards approaches to children’s protection against such harms. This is also the view of the Committee⁴³ which upholds that a healthy environment is a basic precondition for the enjoyment of such rights. Very recently, the Committee has decided to draft a new General Comment, no. 26, on children’s rights and the environment with a special focus on climate change.⁴⁴ This General Comment is meant to provide authoritative guidance, based on

the CRC provisions, on how their rights are impacted by environmental crisis and what nations must do to uphold these rights.⁴⁵ The Committee’s perspectives would provide means of genuine realization of the principles enshrined in the Convention. Such perspectives would also form the basis for the interpretation of related policies and law, and serve as guidance on the articulated linkages of children’s wellbeing and environmental protection.

THE CHILD ACT 2001

In Malaysia, the Child Act 2001 is the most comprehensive piece of legislation enacted relating to children’s protection and welfare. The Act which was passed by the Parliament to fulfill Malaysia’s obligations under the CRC also forms the basic instrument for achieving national policy objectives as envisaged by the relevant policies. The Act’s Long Title states that it is an Act to “consolidate and amend laws relating to the care, protection and rehabilitation of children and to provide for matters connected therewith and incidental thereto”. With the introduction of the Act, previous legislations were repealed, namely the Juvenile Courts Act 1947, the Women and Girls Protection Act 1973 and the Child Protection Act 1991. Fundamentally, the enactment of the Child Act is meant to uphold

Malaysia's commitments based on the CRC's four core principles already mentioned, namely: "non-discrimination; best interests of the child and the right to life; survival and development; and considering the views of the child in decisions which affect them". The Child Act, which is being supported by national policies, incorporates aspects of civil, political, economic, social, health and cultural rights of all children within its provisions. The preamble itself recognises that every child is entitled to "care, rehabilitation, protection and assistance in all circumstances". Section 2 of the Act, which is in accordance with Article 1 of the CRC, defines the child to mean: "a person under the age of eighteen years; and (b) in relation to criminal proceedings, means a person who has attained the age of criminal responsibility as prescribed in section 8 of the Penal Code".

The analysis of the scope of the Act relating to the environment is through the review of its objectives based on the preamble which seeks among others "to strengthen measures in creating safer and more friendly environment to children". Generally, a preamble is a statement found at the beginning of an Act which describes the purpose of that legislation and the intentions of the framers. In relation to statutory interpretation, the preamble should be applicable to all provisions in the Act, or to note the significance of the Act for the courts to infer. However, despite its inclusion within the preamble, it was found that the scope "environment" is narrowly construed and understood only within the context of social and physical, and not extended to include the protection of children's wellbeing in relation to natural environment. Consequently, its scope does not include their protection against the associated harms such as air, water, or toxic pollutions. Nor does it include protection against pollutants that could be found within the safe surrounding of a child's home, school, and playground such as that of household wastes, indoor air pollution or hazardous substance.

The most relevant provision for the purpose of this discussion is section 31 on ill-treatment, neglect, abandonment, or exposure of children. This section is placed within Chapter 3 on "Offences in Relation to the Health and Welfare of Children", and Part V on "Children in Need of Care and Protection". Offences covered by section 31 include abuses, neglects, abandons or exposes the child to physical or emotional injury, whereas the penalty imposed is a fine of up to RM50, 000 or maximum imprisonment term of 20 years or both.

One decided case that can be used to illustrate the application of section 31 pertaining to children's protection in the context of "abuse" is *Pendakwa Raya v Asmaranibt Ghazali*⁴⁶. This is an appeal case where the respondent was charged for "abusing" a child by putting chili into his mouth which led to the child's death. The issue before the court was whether the sentence of 18 months imposed under section 31 by the learned High Court Judge was manifestly inadequate? According to the Court of Appeal, since the charge against the respondent was made under the Child Act, it is therefore of "paramount importance" that the intention of the enactment of the Act to be taken into account when imposing sentence. The court went further to determine the intention of the Act on the basis that it was enacted "to fulfil its obligation under the Convention of the Rights of the Child 1989 (CRC) so as to protect the welfare of children below 18 years of age...". After identifying the intention of the enactment of the Act, the court then defined the word abuse as "a violation of an individual's human and civil rights by any other persons". From this definition, it can be understood that there were two main elements that the court considers in interpreting the word abuse, namely (i) where there was violation of individual's human and civil rights; and (ii) violation is done by any other persons.

With regard to the first element, in order to prove whether the victim's human rights and civil rights were violated, it is necessary to determine whether such rights are secured within any existing law, and whether they are supported by the United Nations Universal Declaration of Human Rights (UDHR) which is the main treaty governing the issue of human rights, regardless of age and status. Generally, human rights is an accepted principle of "fairness and justice inherent in every individual" by virtue of their humanity or moral rights that belong equally to all people simply because they are human beings.⁴⁷ When the UDHR was introduced in 1948, its objective was to establish "the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family and it is the foundation of freedom, justice and peace in the world regardless of the gender, race and religion of the person". This becomes the foundation of UDHR as embodied within Article 1 which states that all human beings are born free and equal in dignity and rights.⁴⁸ It can therefore be argued that as well as the human rights that are laid out in the UDHR, children not only entitled to the same rights, but

they are also in fact entitled to additional rights due to their special needs. In Malaysia, the human rights principle has been upheld and guaranteed by the Constitution as provided in Part 11 and would be application in establishing the first element of “abuse” in section 31.⁴⁹

As regard the second element of abuse which is “violation is done by any other persons”, the court held that it is upon the prosecutor to prove that such violation was done by any other persons. While the judge in this case is silent about what is the meaning of “other person”, the term child abuse is further defined by the judge as:

“...any act of commission or commission by a parent or guardian or any other person which would endanger or impair the child’s physical or emotional wellbeing or that judged by a mixture of community values and professionals as being inappropriate”.

From this definition of the word abuse, it can be construed that its scope is limited and not extended to include other types of harm to children that are associated with polluting activities. When making this interpretation, no reliance was made to the preamble of the Act which aspire the strengthening of “measures in creating safer and more friendly environment to children” to denote the scope of environment in the context of abuse.

Another limitation of the Child Act relates to the meaning of “any person” within clause (5) of section 31. While this clause provides that a person may be convicted if he causes the suffering or injury to the health of the child, the term any person in this clause is confined to “parents, guardian or person legally liable” as provided in clause (4) of the same section. Thus, the punishment imposed by clause (5) is limited only to parents, guardian or person legally liable, and not extended to include those who have caused children’s health to suffer or injure as results of pollution activities. As a consequence, environmental offender such as company, industry or polluter who has no relation with the child will not be regulated by the Act even though they might have exposed the child to physical or emotional injury, or caused the child to be abused or exposed, as a result of their polluting actions.

The court’s restricted interpretation of section 31 can also be construed in relation to the principle of public interest. The first step taken by the court when construing this principle was by looking at the intention of the legislator which is of “paramount importance”. After identifying parliament’s intention, the court held that a serious consideration should be given to children on the basis that “children,

being vulnerable and defenseless as they are very young, require society to safeguard their interest”. However, despite acknowledging the importance of safeguarding children’s interest, the court took a narrow approach in interpreting what constitute vulnerable or defenseless which is confined to ill treatment, neglect, abandonment or exposure by persons having the care of the child. This interpretation is another indication of section’s 31 limited reach which does not include polluters and other environmental offenders since they are not persons having the care of children.

The examination of cases decided under the Child Act has found that until now, there is no single criminal case been brought to court relating to the infliction of harms on children from pollution related activities. All the existing cases were confined to offenders who were having the care of a child but has breached the trust through the acts of injuring or abusing him or her in the context of social environment. These can be seen in the following recent cases such as *Public Prosecutor v Heirul Nizam bin Shahzaman & Anor*⁵⁰, *Juliana Anak Umpau v Public Prosecutor*,⁵¹ *Pendakwa Raya v Lee SeetYeng*⁵²; and *Public Prosecutor v Tan Peng Tong & Anor*.⁵³ In order to articulate this issue in more detail, interviews were conducted with several legal practitioners on the matter.⁵⁴ All the respondents interviewed were of the view that the Child Act in general has an important role to play towards children’s protection. They were also of the view that aspects of children’s rights have been adequately provided in the Act. However, they acknowledged that its scope is confined only to the protection against abuse, neglect, or violent. There is no direct provision to safeguard them from environmental harm to enable cases against polluters and related offenders to be brought under the Act.

From here, it can be understood that while the Act contains several categories of “protection” and capable of incorporating environmental related concerns on children, they have not been applied broadly within the law. At this point, even though the Act’s overall objective is to strengthen efforts to create safer and more friendly environment for children, there is no distinctive interpretation to extent the scope of protection to include ecological dimension. Similarly, even though the Act upholds the principle of child’s best interests to be a paramount consideration, there is limited guidance on assessing what is in a child’s best interests. Little emphasis is given on how children’s rights and interests will be affected by actions that constitute environmental

pollution or climate change offence. Additionally, there is no express provision within the Act for redress against those who cause environmental threat against them.

The subsequent discussion is the review of the objectives of national policies and international law on children from the perspective of the environment. Such review is crucial in re-identifying and integrating policy objectives and international law principles within the Child Act. Taking into account that children are more prone to environmental degradation, and in view of COVID-19 unprecedented challenges, the review is also meant to identify consistency of the law, and to facilitate the adoption of a broader interpretation of the scope of the Child Act on the matter.

CHILD RELATED POLICIES

Generally, a child policy is a manifestation of national aspiration on children’s protection and wellbeing, and guide the manner in which law relating them is to be formulated and enforced. At present, Malaysia already has formulated policies including: (i) National Child Policy 2009 (NCP), (ii) National Child Protection Policy 2009 (NCPP), (iii) National Family Policy 2010 (NFP), and (iv) National Community Policy 2018. Specifically, the NCP⁵⁵ and NCPP⁵⁶ are two of the most important policies, formulated by the Ministry of Women, Family and Community Development (MWFCD). They were designed to align with the principles of the CRC that encompass facets of a child’s life and set forth rights which he or she is entitled to namely civil, political, economic, social and cultural. It is pertinent to mention that the NCP and the Child Act 2001 are currently under review by the MWFCD⁵⁷ as reported by Malaysia’s periodic report,

the Combined Second to Fifth Periodic Reports Malaysia2008-2018 on CRC⁵⁸. Nevertheless, until the revised policies are launched, reference can only be made to the existing directives as regard to their scope on the environment and children.

Specifically, the NCP highlights the concerns on the rights of “survival, protection, development and participation of children in order to enjoy the opportunity and space to achieve holistic development in a conducive environment”.⁵⁹ Environmental related aspects that could be found within this Policy include: “rights to live; right to be protected from all forms of neglect, abuse, violence and exploitation; right to holistic development; and right to participation in matters relating to their best interests and well-being.” The NCP’s environmental aspects could also be found within its strategies which seek to: (i) Provide basic needs such as identity, shelter, food, drink, clothing, love, security and a conducive and child-friendly environment; (ii) Encourage the provision of a safe and healthy environment for children; and (iii) Provide infrastructure facilities and child-friendly environment.

Another relevant policy is the NCPP. As compared to the NCP, the NCPP is formulated based on the CRC’s philosophy on protecting children’s best interests, and focused directly on their protection from neglect, abuse, violence, and exploitation. Within the context of NCPP, child abuse refers to “a serious violation or infringement of the rights of children to grow in a healthy and dignified condition as well posing a risk in their survival”. The NCPP categorises abuse into several classifications which are physical, emotional, sexual and neglect. The scope of the NCPP can further be gauged from the definitions of terms relating to abuse as provided in Table 2:

TABLE 2. Definitions under the National Child Protection Policy

Terms	Definition
Child	a person under the age of 18 years as stipulated in the Child Act 2001
Neglect	“continuous and serious failure to provide basic needs of physical, emotional and development in terms of health, education, emotional development, nutrition, shelter and safe life for children. Neglect can expose children to all forms of harm, including threatening their life”
Physical abuse	“according to the Child Act 2001 is when a child is physically abused causing injuries which can be seen in any part of the body of the child as a result of abuse or intentional use of agents to the body of the child”
Sexual abuse	“according to the Child Act 2001, is when a child is abused sexually if he takes part, either as participants or observers, in any sexual activity for any purpose or sexual exploitation by any to satisfy the sexual desires of that person or another person”
Emotional abuse	“according to the Child Act 2001 is when a child is injured emotionally and the abuse can be seen on the mental or emotional functioning of the child, such as a mental or behavioural disorder, anxiety, depression, withdrawal and delayed development”

Source: Department of Social Welfare Malaysia⁶⁰

Another important policy is the NFP 2010⁶¹ which was formulated by the MWFC and designed to develop prosperous, healthy and resilient families to ensure social stability and introduced to support and complement other policies including the NFP. In general, NFP has conceptualized “family” as the primary determinant of a healthy, dynamic, productive, and competitive nation, and include aspects relating to children and environment therein. The NFP has broadens its discourse as a range of family-centered policy that can influence children’s health and development either directly or indirectly. This can be seen from its aspiration to upholds Malaysia’s international commitment to the CRC based on the preamble which states that:

“...the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”.

The most recent policy is the National Community Policy which was formulated in 2018 by the Ministry of Housing and Local Government.⁶² Its relevance in safeguarding the children can be derived from its objective which seeks to build an inclusive community towards the wellbeing of the people. For the purpose of evaluating the scope of this and other policies from the perspective of children and environment, a content analysis was conducted to highlight their objectives as provided in Table 3 below.

TABLE 3. Key Contents on Environmental Related Themes within Relevant Policies on Children

	National Child Policy 2009	National Child Protection Policy 2009	National Family Policy 2009	National Community Policy 2018
<p>Content overview related to the themes in policy documents related to children</p> <p>↓</p> <p>Definition of a child: “a person under the age of eighteen years” as stipulated in the CRC and the Child Act 2001</p>	<ul style="list-style-type: none"> Objectives: Child survival, protection, growth, participation, advocacy, and research Provide a safe, healthy, and child-friendly environment Ensure child victim of disasters receive appropriate treatment and management 	<ul style="list-style-type: none"> Protect children from neglect, abuse, violent and exploitation 	<ul style="list-style-type: none"> To mainstream the family well-being in planning, implementation, monitoring and assessment of all development programmes be it in the areas of economics, political, health, social, spiritual, environmental, science and technology, and legislation. 	<ul style="list-style-type: none"> Community empowerment to create a caring, comprehensive and respectful community Children, elderly, disabled and women as vulnerable groups Inclusivity in access to services Eliminate school dropouts among children from public housing schemes Awareness on communicable diseases and environmental cleanliness

Source: The NCP, NCPP, NFP and National Community Policy

The evaluation of policy statements of the NCP, NCPP, NFP and National Community Policy revealed that the term environment has been applied to cover aspects of social wellbeing, as well as in relation to ecological protection. For example, the NCP clearly upholds the rights of “survival, protection, development and participation of children in order to enjoy the opportunity and space to achieve holistic development in a conducive environment”. Specifically, Objective 1 seeks to provide basic needs such as “identity, shelter, food, drink, clothing, love, security and a conducive and child-friendly environment”. While Objective 3 aspires to “provide infrastructure facilities and

child-friendly environment”. As regard the NCPP, the most relevant provisions are that on “the creation of a safe and friendly environment for children; and protection of every child from all forms of neglect, abuse, violence and exploitation”. Whereas within the NFP, Strategy (iv) is the most pertinent as it requires having “resources and conducive environment for family empowerment”. In relation to the National Community Policy, aspects of the environment have been highlighted in several of its clusters, including Cluster 1 which emphasises “good quality stratified housing infrastructure is important to achieve a livable and sustainable environment”. Whereas Cluster 2 on Cleanliness, Environment and

Health promotes the local community to “play an important role in looking after the environment and in maintaining a clean environment”.

There are several points to be considered from the above evaluation and the resultant effects on environmental rights for children. From the assessment, it can be construed that objectives of the policies, some of which were inspired by the CRC, contained aspects relating to the environment which can be adequately embraced by the Child Act. The assessment also revealed that efforts have been taken by policymakers to embrace objectives of the CRC which are pertinent in the context of environmental rights. For example, within recently submitted Combined Second to Fifth Periodic Reports Malaysia 2008-2018⁶³, the term ‘sustainable development goals’ and ‘environment’ have been referred to therein. While both the policies and Periodic Reports have mainly addressed environmental issues from the social perspective such as abuse, neglect, and exploitation, they nevertheless take into account sustainability criteria as promoted by the CRC. These include the principles of accountability, transparency, public participation and access to information such as that provided in objective 2 (11) of the CPC; and Advocacy 4 of the NCPP, both of which seek to encourage the provision of a safe and healthy environment for children.

Sustainability criteria could also be found within the NFP’s strategic thrust on ensuring that laws, policies, procedures and their enforcement prioritise the family perspective; and National Community Policy’s Strategy 3.1 on ensuring safe and secure living environment for members of the community. It is further stressed that the need for intervention to lessen children’s environmental threat has also received support from the United Nations which promotes the sustainable development goals.⁶⁴ In the context of children protection, embracing sustainability principles allows for the policies to be dynamic and can support the law in broadening its scope relating to the risks posed to them due to the impacts of climate change and environmental degradation⁶⁵. During the COVID-19 crisis where inequalities to children as a disadvantage group have been laid bare, sustainability criteria which are being upheld by these policies can help guide the law towards equities and justices for the sake of children’s well-being, safety, and lives.

The next discussion below is the analysis of policy directives based on CRC’s relevant provisions. This is meant to articulate their context relating to children’s rights and environmental dimension, and

to comprehend their scope in supporting the law in securing protective actions for children.

ANALYSIS OF POLICY DIRECTIVES BASED ON CRC PROVISIONS

There are several underlying CRC’s principles that can be exemplified as to whether or not the current law sufficiently caters for the upholding of basic rights of children. These include principles of non-discrimination (Article 2); best interests (Article 3); right to survival, protection and development (Article 6); right to participation (Article 12); and state’s obligations (Article 24). Amongst these provisions, the one that implicitly or explicitly relates to environmental aspects is Article 6 which states as follows⁶⁶: (i) States Parties recognize that every child has the inherent right to life, and (ii) States Parties shall ensure to the maximum extent possible the survival and development of the child. The Committee has asserted that children’s rights are interrelated with environmental rights on the basis that any harm to the environment would have “far-reaching consequences for the fulfilment of child rights as a whole”.⁶⁷ This assertion is supported by the definite recognition of environmental right declaration of the 1972’s United Nations International Conference on the Environment which states as follow⁶⁸:

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

It is an accepted notion that exposure to environmental and climate change consequences constitutes an impact to children’s basic right to survival and development. The urgency of a rights-based approach to climate action, for both for present and future generations, has been clearly expressed by the Committee. In its Concept Note, the Committee has quoted the United Nations Human Rights Committee General Comment No. 36 which described environmental degradation as one of “the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”.⁶⁹ The necessity to clarify the relationship between children’s rights and environmental protection is linked to Article 12 of the CRC on rights relating to information, participation, and access to justice. This Article requires states parties to provide children with participation opportunities

by allowing them to “express those views freely in all matters affecting them, and their views being given due weight in accordance with their age and maturity”. Article 12 further requires that children be given and access to justice, namely rights to be heard in “judicial and administrative proceedings affecting them, or through a representative or an appropriate body, consistent with the procedural rules of national law.” At the international level, their participation on environmental issues has already been recognized. For example, the importance of youth’s participation in decision-making processes has been acknowledged by the Convention on Biological Diversity.⁷⁰ However, due to the general lack of opportunity for children’s participation in environmental affairs at the domestic level,⁷¹ the Committee has proposed the establishment child-friendly platforms to facilitate their environmental participation.⁷² Unlike existing formal requirements and legal restrictions that prevent them from participation in decisions on environmental matters, the new platforms should provide them with opportunities to participate in discussions and policy-making at all levels.⁷³

Another relevant provision Article 24.2 (c) relating to health threats to children by pollution which requires states parties to:

“pursue full implementation of this right and, in particular, shall take appropriate measures [...] (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.”

of Article 24.2 (c) has been construed by the Committee to be an express requirement for policymakers to take into account environmental factors as well as guidance for environmental-sensitive child law to ensure that children’s interest will not be left out. By virtue of this provision, the Committee urges state parties to address dangers and risk of environmental pollution in all settings⁷⁴. On this basis, safeguarding their health should include the protection of their surrounding environment such as by controlling indoor air pollution, managing waste disposal, and regulating household toxic substances. In this regard, Article 24.2 (c) should also be used as a guide to regulate environmental impact of business activities that may compromise children’s right to health.

Another important principle, the concept of the best interest is enshrined in Article 3 (1) which provides that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The importance of this principle in the context of children has been upheld by various international agencies. For example, the assertion that “the best interest of the child shall be a primary consideration in all actions concerning children” has been affirmed at the World Summit for Children in 1990⁷⁵ which supports that this principle must be considered in all decisions affecting children. Within the CRC, the best interest principle can appear in a variety of contexts. It has been asserted by the Committee that this principle was formulated in a manner that promotes its broad definition and therefore should be applicable in all actions concerning children.⁷⁶ On this basis, such broad definition should also include pollution or climate change harms. This notion of the importance of children’s priority within the environment has been upheld by the UN Special Rapporteur on Human Rights and Toxics. According to the Rapporteur, the best interests of the child should be served by “preventing exposure to toxic chemicals and pollution, and taking precautionary measures with respect to those substances whose risks are not well understood”.⁷⁷ The Committee’s and Rapporteur’s standpoints on this principle constitute the sources of guidance for the Child Act on how to assess what is in a child’s best interests, and the basis to reinterpret the Act relating to environmental dimensions.

It is to reiterate that since the Child Act was legislated fundamentally to fulfil Malaysia’s obligation to the CRC, it must embrace the objectives of the Convention fully. From the review of the Act, it can be construed that it is capable of providing comprehensive protection to children by virtue of the principle best interests as a paramount consideration.⁷⁸ The principle should be applied more widely so that the protection is extended to include harms associated with ecological degradation. By doing so, the Child Act could include private actors such as industries and business enterprises within the list of its offenders. Similarly, through the application of the said principle, the definition of abuse or neglect under the Act can be broadened to include those associated with environmental threat.

In essence, the CRC as the foundation for children's environmental rights can provide some directions for the strengthening of the Child Act. Specifically, the CRC could offer a normative platform for reinforcing approaches relating to safeguarding children from environmental and climate change harm.

This article has shown how COVID-19 has uncovered weaknesses within the present legal system relating to children's health protection and has made it unfeasible for the policymaker to disregard potential consequences affecting their best interest. As the attention to the demands on environmental protection increases, and in the unprecedented era of the COVID-19, it is now the right opportunity for decision maker to address this gap in the law. There are significant environmental co-benefits from child rights-based principles which decreases children's susceptibility to pollution as it fulfills their basic rights for survival, development, protection, and participation. By applying environmental actions through the lens of the child law, policymakers are not only ensuring the delivery of the CRC obligations, but also contributing to climate action. Given the wider recognition of and concern about children's environmental harm, and in addition to the fact that the CRC already embodied the necessary substantive rights, their broad interpretation can contribute towards efforts within the Child Act in ensuring that no children is left behind in environmental decisions especially during this present time of pandemic crisis.

CONCLUSION

As societies continue to progress, and as new threats to children's well-being keep occurring, the question arises as to whether the child law offers adequate protection for them. It is therefore a concern that the limited scope of the Child Act, which is without an "environmental-lens", is an indication that the Act is not giving adequate attention to environmental or climate change issue. No special protection is provided to children by the Act even though there are high potentials for them to be exposed to pollution. Children's unique and specific responses have been overlooked despite the focus area of national policies is to strengthen efforts to create safer and more friendly environment for them. It is therefore worrisome that children continue to face a wide range of potential environmental hazard such as toxic waste, pesticides, water pollution and

air pollution which have found their way into the homes, schools, and playgrounds. These exposures can cause undesired harmful effects leading to health and other risks including learning disabilities, respiratory diseases, cancers, and other illnesses.

This present article has however identified concrete opportunities for the incorporation of environmental and climate change considerations within the ambit of the Child Act. The CRC which is instrumental towards the Act makes it explicit that all children, in all contexts, to be entitled to the rights it sets out. The CRC's principles which govern the interpretation of all other rights, makes it clear that they have the right to life, survival, and development. Recognizing that a healthy environment is a prerequisite to the enjoyment of all rights, it is crucial for the Child Act to focus its attention on environmental dimensions by virtue of national policy directives and recognized international law principles. As already illustrated, the CRC offers the normative foundation for approaches to children's environment-related rights because it already contains provisions that refer explicitly to the matters.⁷⁹ Since objectives of the CRC have been incorporated within the domestic law and policy, the government as well as the judiciary would have adequate legal imperative to act in accordance with the CRC and to implement its objectives.

As Malaysia has ratified the CRC, it should have a due regard to adhere to its principles and standards. Moreover, taking into account that legislations are important tools to achieve the aims of policies, it is pertinent that principles on children's protection against environmental hazards are consistently applied and integrated into the law. Considering that the Child Act is almost 20 years old, its revision is much anticipated particularly relating to its alignment with other international commitments such as the sustainable development goals. From the estimation of the nexus between environmental harm exposures on children, and the magnifying impacts as outcomes of the COVID-19, immediate measures are needed to address challenges they faced relating to environmental issues and to ensure that they would receive protection against such harm. Without immediate action, the combination of worldwide environmental and climate change problem, and global COVID-19 pandemic could severely threaten children's wellbeing, with grave consequences on their livelihood and survival.

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