



States' Obligations to Stabilize the Climate for the Life, Survival and Development  
of Children and Future Generations

Submission by Just Planet  
for consideration by the UN Committee on the Rights of the Child  
during its Day of General Discussion on Children's Rights and the Environment  
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**Just Planet**, founded in 2015, is an international human rights organization with headquarters in Geneva, Switzerland. Just Planet advances human rights, recognizing the indivisibility of all human rights across past, present, and future generations, as well as the interdependence of humanity and the planet. Guided by international human rights law, international criminal law, and international humanitarian law, Just Planet's mission is to promote and defend human rights worldwide by identifying contemporary and emerging human rights challenges, and strategically responding to human rights violations.

## UN Convention on the Rights of the Child

### Article 6

- (1) States Parties recognize that every child has the inherent right to life.
- (2) States Parties shall ensure to the maximum extent possible the survival and development of the child.

## INTRODUCTION

1. This submission aims to clarify and prioritize children's right to life, survival and development under the UN Convention on the Rights of the Child (Convention) as it relates to the threat of global climate change, one of the greatest threats confronting humanity today.
2. We identify States' obligations to protect children's right to life, survival and development against the climate harms done by transnational oil and gas entities, especially those who engage in 'extreme energy'<sup>1</sup> projects, such as tar sands and shale gas developments.
3. In light of 5<sup>th</sup> Assessment report of the Intergovernmental Panel on Climate Change (IPCCAR5),<sup>2</sup> this submission makes two corollary assumptions: (1) States are aware of the serious dangers of continued fossil fuel reliance, and (2) States must take urgent action to reduce GHG emissions in compliance with international environmental obligations<sup>3</sup> and science based targets<sup>4</sup> by ending fossil fuel subsidies, development, production, and consumption.
4. The majority of proven oil and gas reserves are controlled by State-owned entities.<sup>5</sup> Just 90 companies--the vast majority extractive industries, many state-owned--are responsible for two thirds of the world's post-industrial greenhouse gas emissions, half of which have been emitted since 1986.<sup>6</sup> We therefore emphasize States' obligations to respect and

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<sup>1</sup> Extreme energy refers to new, more intensive and environmentally destructive energy extraction methods that are used when traditional, easier to extract fossil fuel sources are depleted. 'Tar sands' (also called the oil sands) extraction, deep water and Arctic drilling, shale gas extraction by hydraulic fracturing ('fracking') are examples of extreme energy projects. For more specific definitions see <http://extremeenergy.org/about/what-is-extreme-energy-2/>

<sup>2</sup> IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp. (IPCCAR5).

<sup>3</sup> Kyoto Protocol, UN Doc FCCC/CP/1997/7/Add.1, Dec. 10, 1997; 37 ILM 22 (1998).

<sup>4</sup> James Hansen et al., (2013) Assessing 'Dangerous Climate Change': Required Reduction of Carbon Emissions to Protect Young People, Future Generations and Nature, Available at: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0081648>

<sup>5</sup> Richard Heede, *Climatic Change* (2014) 122: 229; Ian Bremmer, 'The Long Shadow of the Visible Hand' *The Wall Street Journal* (22 May 2010).

<sup>6</sup> Heede (n 5); Suzanne Goldenberg, 'Just 90 Companies Caused Two-Thirds of Man-Made Global Warming Emissions', *The Guardian*, 20 November 2013.

protect children's right to life survival and development by (1) ceasing to invest (directly or through subsidies) in fossil fuel development, (2) placing an immediate ban on extreme energy projects, (3) imposing strict environmental and human rights regulations on oil and gas industries, and (4) investing in a rapid transition to renewable energy sources.

5. This submission also considers the rights of future generations, arguing that protection of children's rights must project forward temporally in order to protect future generations from the present day acts and omissions of States that contribute to climate change, the impact of which may take decades to materialize due to the delay between carbon emissions and climate change effects.
6. In the following pages we lay out climate change as a grave and certain threat to the life, survival, and development of children and future generations. We provide a legal framework to establish environmental and intergenerational dimensions of children's rights. The normative substance of these rights draws on the work of the UN Special Rapporteur on Human Rights and the Environment, notions of intergenerational justice, and indigenous rights frameworks.

## CLIMATE CHANGE

### *A threat to children's right to life, survival and development*

7. Climate change is a serious and imminent threat to humanity. The Intergovernmental Panel on Climate Change (IPCC) has concluded with great certainty that: (1) an increase in greenhouse gases (GHGs) in the atmosphere is causing climate change; (2) GHG emissions are caused by human activity, particularly burning of fossil fuels; and (3) rise in global average temperatures beyond two degrees Celsius (2C) above pre-industrial levels is beyond the threshold for human safety.<sup>7</sup> On our current course of global GHG emissions, the most recent IPCC forecast predicts catastrophic climate destabilization with devastating outcomes for humanity.<sup>8</sup>
8. Beyond the 2C threshold, disruption to climate equilibrium reaches a tipping point at which sudden, unpredictable, and potentially irreversible climate destabilization occurs due to 'out of control amplifying feedbacks' caused by ice melt and methane gas release.<sup>9</sup> The result will be ecosystem collapse and a climate state that threatens human survival.<sup>10</sup> Furthermore, 'climate lag'—inertia in climate systems that causes a delay between GHG emissions and climate impacts—means that the adverse impact of current GHG emissions may be felt decades or even centuries into the future.<sup>11</sup> On humankind's

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<sup>7</sup> IPCCAR5 (n 2).

<sup>8</sup> Ibid.

<sup>9</sup> James Hansen and others, 'Climate Sensitivity, Sea Level and Atmospheric Carbon Dioxide' (2013) 371 Phil Trans R Soc A 24.

<sup>10</sup> Ibid.

<sup>11</sup> IPCC, Climate Change 2001: Synthesis Report <<http://www.ipcc.ch/ipccreports/tar/vol4/011.htm>>

current course, some scientists have predicted a 4C rise by the end of this century.<sup>12</sup>

9. Even below the 2C threshold, the planet faces a suite of devastating consequences, each implicating a cascade of human rights impacts: shrinking water sources, collapse of food stocks, reduction of biodiversity and species extinction, desertification, extreme temperatures, flooding, droughts, wildfires, super-storms, extreme weather (such as tropical cyclones and hurricanes), salinization of water tables due to sea level rise, permafrost melt, and acidification of oceans causing widespread ocean death.<sup>13</sup> Almost every region of the planet has begun to feel the devastating impacts of climate change. Though there is great variability in how climate change impacts local communities, depending on factors such as social and economic status and geographical location, none will escape its deleterious effects.<sup>14</sup>
10. Climate change entails fundamental human rights issues, especially given that its causes and consequences are rooted in a system of global capital that relentlessly pursues the natural riches of the planet, leaving a trail of poverty, social inequality, and environmental destruction in its wake. Moreover, those who suffer the harshest consequences of climate change—the global poor, women and girls, indigenous peoples, peoples of the Arctic and Global South, and children—have contributed the least to its causes.<sup>15</sup>
11. Climate change is a pressing and paramount children’s rights matter as children are disproportionately harmed, principally because they will live long enough to endure its worst impacts, but also because of their physical, developmental, and social vulnerability. The impact and threat to children is further compounded by the intersectionality of gender inequality, histories of colonization, poverty, racial discrimination, geographic vulnerability, and other inequalities.<sup>16</sup> The lack of children’s representation in decision-making bodies globally makes protecting their present interests and future well-being/survival even more critical.
12. IPCCAR5 has solidified and unequivocally established the foreseeability of irreparable harms caused by States’ failures to reduce GHG emissions. This foreseeability has important legal ramifications. Entities that continue to extract and burn fossil fuels—or promote and/or adopt (GHG-intensive) extreme energy policies and activities—will be partly responsible for unleashing catastrophic climate change on children and generations to come. States thus have an obligation under the Convention to respect and protect children’s right to life, survival and development against the climate change impacts of fossil fuel industries.

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<sup>12</sup> O Milman, ‘Climate Change Models Underestimate Likely Temperature Rise, Report Shows’ *The Guardian* (13 December 2013).

<sup>13</sup> IPCCAR5 (n 2).

<sup>14</sup> Ibid.

<sup>15</sup> M Robinson, ‘Climate Change and Justice’ (IIED Barbara Ward Lecture, London, December 2006).

<sup>16</sup> UNICEF, ‘2013 Report Climate Change: Children’s Challenge’ <[www.unicef.org.uk/Latest/Publications/climate-change-report-jon-snow-2013/](http://www.unicef.org.uk/Latest/Publications/climate-change-report-jon-snow-2013/)>

## ***Growing Consensus Climate Change is a Human Rights Emergency***

13. Climate change has become an urgent concern of numerous UN agencies, including human rights bodies. In the lead-up to the UN Climate Conference in Paris (COP21), 27 UN Special Procedures mandate holders issued a joint statement, which identified climate change as one of the greatest human rights challenges of our time and called on States to take urgent action:

*Climate change is one of the greatest human rights challenges of our generation, and it is our generation that must meet it. Indeed, the heads of governments and their climate negotiators represent the very last generation that can prevent catastrophic environmental harm to a vast array of human rights.*<sup>17</sup>

14. The UN High Commissioner for Human Rights, in an impassioned statement titled ‘Burning Down the House’, called on world leaders to protect human rights by acting with urgency and determination during the climate negotiations in Paris:

*[I]nternational human rights law imposes affirmative legal obligations on all states to take the necessary steps in law, policy, institutions, and public budgets to protect human rights from such [climate change] harms. States are obliged to prevent these harms by regulating environmental practices, to hold violators accountable, protect vulnerable communities, and ensure redress where harms are suffered. Clearly, we are living in an age of widespread breach of these obligations. This must end.*<sup>18</sup>

15. The Paris Agreement identifies climate change as an ‘urgent and potentially irreversible threat to human societies and the planet’.<sup>19</sup> Following the unveiling of the Paris Agreement, The UN Secretary-General also affirmed climate change as one of humanity’s greatest threats.<sup>20</sup>

16. Prior to the Paris Agreement, UN Secretary General Ban Ki-moon warned world leaders in 2014 against States’ continued investment in fossil fuels: ‘We need to address market distortions, such as fossil fuel subsidies, that promote more energy use and greater emissions and inhibit the adoption of cleaner technologies. And we need to be clear about the risks of investing in fossil fuels.’<sup>21</sup> The risks to children and future generations of States’ continued investments in fossil fuels are immense.

17. The International Energy Agency (IEA) issued a grave warning that the majority of fossil fuels must remain in the ground, predicting in 2011 that humanity had five years to

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<sup>17</sup> Joint statement by UN Special Procedures on the occasion of World Environment Day, 5 June 2015.

<sup>18</sup> Statement of Zeid Ra’ad Al Hussein, UN High Commissioner for Human Rights, 3 December 2015.

<sup>19</sup> Paris Agreement, FCCC/CP/2015/L.9/Rev.1.

<sup>20</sup> Secretary-General Ban Ki Moon, Remarks to the General Assembly on Outcome of COP21, 15 December 2015.

<sup>21</sup> UN Secretary-General Ban Ki-moon’s remarks at the Climate Leaders Summit, in Washington, D.C April 11 2014.

change course to avoid serious climate destabilization.<sup>22</sup> The IEA chief economist issued an urgent warning again in 2013, ‘Globally, the direction we are on is not the right one. If it continues, the increase would be as high as 5.3C degrees and that would have devastating effects on all of us.’<sup>23</sup>

### ***Extractive industries: The driving force behind climate change***

18. State-owned companies control most of the world's proven oil reserves (75% in 2014) and oil production (58% in 2014).<sup>24</sup> Thus, States have a great deal of power to reduce fossil fuel development, production, and consumption.
19. Ninety corporate entities (investor and state-owned), the vast majority of which are engaged in extractive industries, hold responsibility for two-thirds of total post-industrial global GHG emissions, with half of those emissions produced since 1986.<sup>25</sup> Despite numerous international agreements to curb GHGs, transnational oil and gas companies (many State-owned) carry on unabated.
20. As conventional oil and gas sources are depleted, companies turn to far more environmentally destructive and carbon intensive fossil fuels, such as tar sands oil and shale gas.<sup>26</sup> The world has entered a new chapter of ‘extreme energy’ with companies employing enormously toxic, destructive, GHG and water-intensive extraction methods, such as deep water and Arctic drilling, hydraulic fracturing (‘fracking’),<sup>27</sup> and tar sands extraction.<sup>28</sup> Climate scientists warn that exploitation of the Canadian tar sands alone could double the amount of carbon dioxide emitted in the entire history of global oil consumption, and would certainly lead to runaway climate change.<sup>29</sup>
21. Methane, a potent GHG, is the main constituent of natural gas and has a global warming potential 84-86 times that of carbon dioxide during a 20-year period and about 34 times over 100 years.<sup>30</sup> If methane fugitive emissions of shale gas production (fracking) are as

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<sup>22</sup> International Energy Agency (IEA), ‘World Energy Outlook 2011’ (IEA 2011).

<sup>23</sup> IEA, ‘World Energy Outlook Special Report: Redrawing the Energy-Climate Map’ 10 June 2013 (IEA 2013).

<sup>24</sup> US Energy Information Administration, ‘Energy in Brief: Who are the major players supplying the world oil market?’ <[http://www.eia.gov/energy\\_in\\_brief/article/world\\_oil\\_market.cfm](http://www.eia.gov/energy_in_brief/article/world_oil_market.cfm)>

<sup>25</sup> Heede, R. (2014) 122 *Climatic Change* 229. doi:10.1007/s10584-013-0986-y

<sup>26</sup> A Nikiforuk, *Slick Water: Fracking and One Insider’s Stand Against the World’s Most Powerful Industry* (Greystone 2015); A Nikiforuk, *Tar sands: Dirty Oil and the Future of a Continent* (Greystone 2010).

<sup>27</sup> An process in which water is mixed with sand and chemicals, and then injected at high pressure into the earth in order to extract oil or natural gas.

<sup>28</sup> Tar sands (also referred to as oil sands) are a combination of clay, sand, water, and bitumen (a tar-like heavy oil substance). Extraction of bitumen that lies too deep beneath the surface for mining involves a water and carbon intensive process in which steam is blasted into the earth’s core to melt deeper level bitumen stores for extraction and processing into oil. The extraction and dilutant process is extremely water and energy intensive and results in huge amounts of a highly toxic, sludgy byproduct referred to as ‘tailings’. The Canadian tar sands, which occupy a land mass the size of Greece, contain tailings ponds covering 220 square kilometres and holding approximately 975 billion liters of toxic sludge. The Alberta (Canadian) government aims to triple its tar sands production between 2011 and 2035.

<sup>29</sup> J Hansen, ‘Game Over for the Climate’ *New York Times* (12 May 2012).

<sup>30</sup> IPCCAR5 (n 2).

large as estimated by some, the GHG footprint of shale gas (development and use combined) is larger than conventional gas and even coal over a 20-year horizon.<sup>31</sup>

22. Despite IEA warnings about the need to keep the majority of fossil fuels in the ground, States continue to invest in fossil fuels, approve land use contracts for extreme energy projects, and subsidize oil and gas interests over investment in renewable energy;<sup>32</sup> global fossil-fuel subsidies outstrip financial support to renewable sources of energy by a ratio of 5:1.<sup>33</sup> According to a recent study by the IMF, fossil fuel companies receive global subsidies of \$5.3 trillion a year, equivalent to \$10 million a minute every day.<sup>34</sup>

### **Recommendation:**

- 23. In light of the above facts and trends, we urge the CRC to enunciate States' obligations pursuant to Article 6 of the Convention to (1) immediately divest from fossil fuel development, production and consumption; (2) enforce strict regulation of extractive industries and enforce environmental and human rights standards; and (3) invest in a rapid transition to renewable energy.**

## III-LEGAL FRAMEWORK

### *Norms supporting intergenerational environmental protections of children's rights*

#### (a) Human Rights & Environment

24. Since the 1970's, the United Nations (UN) has affirmed the connection between human rights and the environment.<sup>35</sup> Although international human rights law (IHRL) was initially slow to adopt these norms, IHRL now firmly recognizes that the realization of human rights is dependent upon a safe, clean, healthy, and sustainable environment.<sup>36</sup>
25. A number of special procedures mandate holders have articulated the impacts of climate change within the legal framework of economic, social and cultural rights and have established environmental protections within the indispensable rights to food, water, and

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<sup>31</sup> RW Howarth, R Santoro & A Ingraffea, 'Methane and the Greenhouse-gas Footprint of Natural Gas from Shale Formations.' (2011) 106 *Climatic Change* 679-690; LM Cathles III, et al., 'A Commentary on 'The Greenhouse-gas Footprint of Natural Gas in Shale Formations' by RW Howarth, R. Santoro, and Anthony Ingraffea.' (2012) 113 *Climatic Change* 525-535; DR Caulton, et al., 'Toward a Better Understanding and Quantification of Methane Emissions from Shale Gas Development.' (2014) 111 *Proceedings of the National Academy of Sciences* 6237-6242.

<sup>32</sup> The World Bank also continues to invest in fossil fuels with an increase in fossil fuel financing in 2014. See Karl Mathiesen, 'World Bank fossil fuel financing leapt in 2014 despite its calls to end subsidies' *The Guardian* 17 April 2015.

<sup>33</sup> IEA 2013 (n 23).

<sup>34</sup> D Coady, et al. 'How Large Are Global Energy Subsidies?' IMF publication, May 18, 2015. available at <http://www.imf.org/external/pubs/cat/longres.aspx?sk=42940.0>.

<sup>35</sup> Stockholm Declaration, U.N. Doc. A/Conf.48/14/Rev. 1(1973).

<sup>36</sup> A/HRC/RES/19/10; A/HRC/RES/25/21; A/HRC/RES/28/11.

adequate housing.<sup>37</sup> Signalling wide agreement among human rights experts, the 2009 Joint Statement of the special procedure mandate holders bolstered the resolve of the Human Rights Council to tackle climate change and the relationship between human rights and the environment. In 2012, the Human Rights Council appointed an independent expert on human rights and the environment (now the Special Rapporteur), a critical and welcome move toward integrating environmental protections into international human rights standards.<sup>38</sup>

26. In his first report, this Independent Expert, John Knox, outlined the obligations that human rights law imposes regarding environmental protection and highlighted the need for greater study.<sup>39</sup> His top priority was to conceptually clarify the link between human rights and the environment. Pointing to numerous Human Rights Council resolutions, the work of many special rapporteurs and independent experts, regional instruments, and substantial jurisprudence, Knox made a powerful case for the existence of environmental protections within human rights obligations, concluding that human rights, including the right to life, are indeed dependent on ‘an environment that allows them to flourish.’<sup>40</sup>

#### (b) Intergenerational Justice

27. The idea of intergenerational justice is gaining traction within international human rights law discourse in relation to climate change.<sup>41</sup> Edith Brown-Weiss pioneered the legal notion of intergenerational equity, which is the idea that we have an obligation to protect the environment for the sake of future generations.<sup>42</sup> Rooted in the concept of trusteeship, Brown-Weiss’s theory of intergenerational ecological justice rests on two central tenets: (1) we exist in relation to other generations, and (2) we exist in relation to a system of nature. She argues that we have a legal and moral obligation to future generations to leave the planet in as good or better condition than we found it. Before considering this idea within children’s right to life, survival and development, it is useful to briefly explore where international environmental law has led the way in establishing these norms.
28. A key principle of the 1972 Stockholm Declaration is that ‘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.**’[emphasis added]<sup>43</sup> Significantly, this principle, with its emphasis on equality and dignity, is articulated in the

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<sup>37</sup> See for instance Orellana M A, Kothari M & Chaudry S, ‘Climate Change in the Work of the Committee on Economic, Social and Cultural Rights’ Accessed online <[http://www.ciel.org/Publications/CESCR\\_CC\\_03May10.pdf](http://www.ciel.org/Publications/CESCR_CC_03May10.pdf)>; A/HRC/9/23; A/HRC/19/34.

<sup>38</sup> A/HRC/RES/19/10.

<sup>39</sup> A/HRC/22/43.

<sup>40</sup> Ibid, para 10.

<sup>41</sup> See for instance: [www.futurejustice.org](http://www.futurejustice.org) or Oxford Martin Human Rights of Future Generations Programme.

<sup>42</sup> E Brown-Weiss, *In fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (UNU 1989).

<sup>43</sup> Principle 1.

language of human rights.<sup>44</sup> Decades later, the UN Framework Convention on Climate Change (UNFCCC)—the core international agreement on climate change—articulated similar obligations to future generations, stating ‘[t]he Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.’<sup>45</sup> Moreover, UNFCCC institutionalized the forward-looking precautionary principle as a norm of environmental protection, a development that is critical to the protection of children and future generations.<sup>46</sup>

29. Despite its establishment as a fundamental principle of international environmental law, the norm of intergenerational justice is not yet established within international human rights law, except implicitly in the move toward sustainable development.<sup>47</sup> Sceptics argue that although there is a moral imperative to protect future generations from environmental catastrophe, no corresponding legal right exists. They argue that the conceptual relationship between duty bearers and the construct of ‘future generations’ as correlative rights holders is tenuous.<sup>48</sup>
30. A number of legal theorists and experts have responded to this concern. Pointing to examples within traditional legal paradigms, they assert that climate related duties neither depend on the identity of the duty bearer, nor the temporal distance between actions and harms.<sup>49</sup> A right is philosophically defensible to the extent that it concerns human interests. Intergenerational ecological justice foregrounds the urgency of the threat of climate change as justification for bracketing philosophical challenges; the central purpose of human rights is to protect the interests of humanity.<sup>50</sup>
31. Intergenerational protections may also be understood as implicit within foundational human rights standards.<sup>51</sup> Protecting the rights of future generations thus might best be viewed as highlighting what is implicit in the law—the notion that human rights are inherently connected to past, present, and future generations and that protecting the environmental conditions upon which future generations depend is fundamental to the realization of human rights. According to one expert on intergenerational environmental justice, human rights ‘attach themselves to us not as isolated individuals, but as citizens interrelated in a complex web of responsibility and liberty that includes our ancestors, as well as future persons, whose actions or welfare will be hugely affected by our decisions while we are alive.’<sup>52</sup>

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<sup>44</sup> R Hiskes, ‘Environmental Human Rights’ in T Cushman, ed. *Handbook of Human Rights* (Routledge 2011).

<sup>45</sup> 1771 UNTS 107 (1992), art 3(1).

<sup>46</sup> Art 3(3).

<sup>47</sup> Millennium Development Goal # 7 [http://www.undp.org/content/undp/en/home/mdgoverview/mdg\\_goals/mdg7](http://www.undp.org/content/undp/en/home/mdgoverview/mdg_goals/mdg7).

<sup>48</sup> B Weston, ‘The Theoretical Foundations of Intergenerational Ecological Justice: An Overview’ (2012) 34 HRQ 251.

<sup>49</sup> D Bell, ‘Does Anthropogenic Climate Change Violate Human Rights?’ (2011) 14 Critical Rev of Intl Social and Political Philosophy 99.

<sup>50</sup> Weston (n 48).

<sup>51</sup> JG Merrills, ‘Environmental Protection and Human Rights: Conceptual Aspects’ in Boyle, Alan E., and Michael R. Anderson. *Human rights approaches to environmental protection* (Clarendon 1996).

<sup>52</sup> R Hiskes, ‘The Right to a Green Future: Human Rights, Environmentalism, and Intergenerational Justice’ (2005) 27 HRQ 1346, 1354-55.

32. The Philippines Supreme Court has also effectively recognized the inextricable link between rights and obligations in this arena, laying a promising ground for the protection of future generations vis-à-vis environmental claims of present-day children. In *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources*, representing current and future generations, children claimed a constitutional right to a healthy environment and challenged the State for allowing destruction of rain forests.<sup>53</sup> By accepting a justiciable right of children to claim environmental protections for themselves and future generations, the court advanced the notion of intergenerational justice:

*Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit...every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.*<sup>54</sup>

33. The logic of *Minors Oposa* is extremely relevant and useful to the advancement of intergenerational (and environmental) dimensions of children's right to life in relation to climate change.<sup>55</sup> We are seeing a rise in cases where children are asserting public trust arguments on behalf of themselves and future generations against States whose acts or omissions have contributed to increased GHGs and climate change impacts.<sup>56</sup> **We urge the Committee to adopt this jurisprudential logic and Supreme Court finding, along with the above scholarly opinions and legal conclusions, in guiding States to fulfil their intergenerational environmental obligations under the Convention.**

(c) Indigenous Rights – intergenerational environmental justice

34. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), an instrument centred in the collective intelligence and leadership of indigenous peoples, recognizes that indigenous knowledge and culture contribute to proper management of the environment and articulates the collective rights of indigenous peoples to conservation and protection of the environment.<sup>57</sup> It is a 'stewardship model of intergenerational reciprocity',<sup>58</sup> that engages a holistic, collective view of humanity and inseparably

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<sup>53</sup> 33 ILM 173 (1994).

<sup>54</sup> *ibid.*

<sup>55</sup> Telephone communication with Geraldine VanBueren 7 Augst 2013; A Viña, 'The Right to a Sound Environment in the Philippines: The Significance of the Minors Oposa Case' (1994) 3 Rev of Eur Community & Intl Enviro L 246.

<sup>56</sup> See for example Our Children's Trust cases in the United States: [www.ourchildrenstrust.org](http://www.ourchildrenstrust.org)

<sup>57</sup> (2 October 2007) UN Doc A/RES/61/295, preamble and art 29.

<sup>58</sup> Weston (n 48) 260.

connects past, present and future generations to the natural world. Humans are accurately positioned within a broader system of interdependence with nature. These ideas resonate in the following declaration and call to action from indigenous leaders at the 2012 UN Conference on Sustainable Development:

*This inseparable relationship between humans and the Earth, inherent to Indigenous Peoples must be respected for the sake of our future generations and all of humanity. We urge all humanity to join with us in transforming the social structures, institutions and power relations that underpin our deprivation, oppression and exploitation.*<sup>59</sup>

35. Indigenous rights frameworks are most apt to deal with the causes and consequences of climate change. All humans rely on nature for subsistence; this is a universal, biological fact. Indigenous rights embody this reality cogently. In a sense, children's right to life must be 'indigenized' by foregrounding the inseparable relationship between humans and the earth inherent to all peoples.<sup>60</sup>

**36. The well-settled international norms of environmental protection, intergenerational ecological justice, and indigenous rights principles, all of which have been shown by the above paragraphs to be integrally connected to the realization of fundamental human rights and States' obligations to protect and fulfil the same, provide a powerful normative and legal framework by which to recognize and enforce children's right to life, survival and development under the Convention.**

### *State Obligations in relation to climate change*

37. The Oslo Principles on Global Climate Change Obligations, produced by an international group of eminent jurists, including High Court judges, law professors and advocates, articulate States' obligations in relation to climate change.<sup>61</sup> The Oslo Principles are centred in well-established principles and law and hold that, regardless of international agreements, States have a legal obligation to prevent the potentially catastrophic impacts of climate change pursuant to existing international human rights law, environmental law and tort law. The principles articulate the necessity and urgency of fulfilling such obligations:

*Avoiding severe global catastrophe is a moral and legal imperative. To the extent that human activity endangers the biosphere, particularly through the effects of human activity on the global climate, all States and*

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<sup>59</sup> Declaration of World Indigenous Peoples Conference on Territories, Rights and Sustainable Development at Rio +20 (Rio de Janeiro 13-22 June 2012). <<http://indigenous4motherearthrioplus20.org/kari-oca-2-declaration/>> (Kari-Oca II Declaration).

<sup>60</sup> One must also be careful not to erase or over-simplify the distinctiveness of indigenous cultural relationships to nature and the connection to ancestral territories that defines indigenous rights.

<sup>61</sup> Oslo Principles on Global Obligations to Reduce Climate Change <<http://www.yale.edu/macmillan/globaljustice/Oslo%20Principles.pdf>> (Oslo Principles).

*enterprises have an immediate moral and legal duty to prevent the deleterious effects of climate change. While all people, individually and through all the varieties of associations that they form, share the moral duty to avert climate change, the primary legal responsibility rests with States and enterprises.*<sup>62</sup>

38. In a March 2016 address to the Human Rights Council, the Special Rapporteur on human rights and the environment, John Knox, made the following statement about States' human rights obligations in relation to climate change:

*Substantively, each State has an obligation to protect human rights against the harmful effects of climate change. This obligation means that each State must do what it can, with international assistance when necessary, to establish and implement effective mitigation and adaptation measures.*<sup>63</sup>

### **Obligations under the Convention**

#### **(a) General Principles of the Convention**

39. The principle of non discrimination under Article 2 articulates States' obligation to ensure that 'all legislation, policies and programmes that deal with business issues are not intentionally or unintentionally discriminatory towards children in their content or implementation'.<sup>64</sup> States continued investment in the extraction, production and consumption of fossil fuels, especially extreme energy sources, violates children's right to be free from discrimination. States have an obligation to respect and protect children's right to life, survival and development against the discriminatory and disproportionate impacts of climate change caused by the fossil fuel industry.

40. Article 3, the best interests of child principle, is a substantive right, rule of procedure, and fundamental principle of interpretation of the Convention. Article 3 obliges States to give paramount consideration to children's best interest,

*...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.*<sup>65</sup>

41. In relation to children's right life, survival and development, the Committee articulates children's best interests in terms of States obligation to create 'an environment that

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<sup>62</sup> Ibid, 1.

<sup>63</sup> Climate Change and Human Rights; and Implementation of the Human Rights Obligations Relating to the Environment Mr. John H. Knox Special Rapporteur on human rights and the environment Statement Human Rights Council, 31st Session 3 March 2016, 4

<sup>64</sup> CRC, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, 17 April 2013, para 13.

<sup>65</sup> CRC, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, para 1.

respects human dignity and ensures the holistic development of every child' and to ensure 'full respect for his or her inherent right to life, survival and development.'<sup>66</sup>

42. Best interests of the child must be given the broadest meaning regarding States' acts or omissions to protect the environment and must prioritize the views of the child under Article 12.<sup>67</sup>

(b) Article 6, Right to life, survival and development

43. According to the World Health Organization, between 2030 and 2050, climate change is expected to cause approximately 250 000 deaths annually from malnutrition, malaria, diarrhoea and heat stress with a disproportionate impact on children, especially those who are already vulnerable due to poverty, gender, indigenous heritage, or geographic location.<sup>68</sup> These numbers will certainly be higher if one takes into account deaths by extreme weather disasters such as cyclones, hurricanes wild fires, and flooding.
44. The right to life is a supreme right, from which no derogation is permitted, and must be interpreted broadly under core international human rights standards.<sup>69</sup> States are obligated under Article 6 of the CRC to protect children's right to life, survival and development. Article 4 sets out States' obligations to implement legal and regulatory frameworks, and in the case of economic and social rights, to take measures to the maximum of available resources and within a framework of international cooperation. The right to life is prioritized within the CRC and is the only right described as inherent.<sup>70</sup> Article 6 is key to protecting current and future generations from climate change because it imposes positive obligations upon States to ensure children's right to survival. The Committee calls for a broad and holistic interpretation of this right.<sup>71</sup>
45. Both the wording and the drafting history of Article 6 leaves little doubt that the right to life, survival and development obliges State Parties to 'adopt a holistic approach to the child's development, taking comprehensive positive measures to fulfil to the maximum extent possible the survival and healthy development of the child.'<sup>72</sup> The right to survival imposes positive obligations upon the state to prolong the life of the child, and is a key provision for forward-looking protections against climate change.<sup>73</sup> The Committee specifically enumerates environmental degradation from business as a threat to children's right to survival,<sup>74</sup> supporting a comprehensive interpretation that assumes rights to

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<sup>66</sup> Ibid, para 42.

<sup>67</sup> CRC, *General comment No.14*.

<sup>68</sup> Climate Change and Health Fact Sheet (June 2016)

<sup>69</sup> HRC, *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April 1982

<sup>70</sup> S Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff 1999).

<sup>71</sup> CRC, (CRC), *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003.

<sup>72</sup> M Nowak, *Article 6: the Right to Life, Survival and Development* (Brill Academic Pub 2005) 37

<sup>73</sup> S Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff 1999).

<sup>74</sup> CRC, *General Comment No. 16*.

adequate food, housing, water and a healthy environment.<sup>75</sup> The Committee also identifies the potential for environmental harms to be intergenerational and is unequivocal that States have an obligation to ‘take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children’s rights.’<sup>76</sup> Where a State fails to protect children’s rights from interference by corporations, or collaborates with, or tolerates such infringements, the state is responsible for those violations.<sup>77</sup>

(c) Rights of indigenous children: intergenerational environmental protections

46. Mediated by histories and structures of colonial domination, the rights of indigenous children are centred in rights to culture and self-determination.
47. The Convention is the first core global human rights treaty to specifically articulate the rights of indigenous children, and it does so across a number of provisions.<sup>78</sup> CRC General Comment No. 11 guides States on the implementation of indigenous children’s rights, articulating rights to culture under Article 30, as both individual and collective, with collective values and traditions closely linked to the natural world. Temporally and environmentally situated, indigenous children’s rights to culture and self-determination are rooted in ancestral linkages to lands, and foreground indigenous connections to the natural environment. A similar analysis is articulated in the Committee’s interpretation of the right to life, survival, and development, which asserts: ‘States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children’s right to life, survival, and development to the maximum extent possible.’<sup>79</sup>
48. Children’s right to life, survival and development must be read in conjunction with the principles set out in UNDRIP, particularly Articles 25 and 29, which clearly articulate intergenerational responsibilities and environmental protections.<sup>80</sup>
49. A substantial body of jurisprudence addresses indigenous rights in relation to extractive industries.<sup>81</sup> Though jurisprudence has not addressed the specific rights of indigenous children or future generations *per se*, the decision in *Ominayak v. Canada* laid promising groundwork for future legal claims.<sup>82</sup> This case is significant beyond its central importance of reinforcing environmental dimensions of indigenous rights. In his

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<sup>75</sup> Nowak (n 72).

<sup>76</sup> CRC, *General Comment No. 16*.

<sup>76</sup> Nowak (n 72).

<sup>77</sup> CRC, *General Comment No. 16*, para 28.

<sup>78</sup> CRC, *General comment No. 11 (2009): Indigenous children and their rights under the Convention [on the Rights of the Child]*, 12 February 2009.

<sup>79</sup> *Ibid*, para 35.

<sup>80</sup> CERD has led the way on UNDRIP in relation to extractive industries.

<sup>81</sup> See UNHRC Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya ‘Extractive Industries and Indigenous Peoples’ (2 September 2013) UN Doc A/HRC/24/41/Add.4.

<sup>82</sup> *Ominayak and Lubicon Lake Band v. Canada* (1990) Communication No. 167/1984 UN Doc CCPR/C/38/D/167/1984.

individual opinion, Mr. Ando identifies intergenerational environmental justice implications of the case, suggesting the case might serve as, ‘a warning against the exploitation of natural resources which might cause irreparable damage to the environment of the earth that must be preserved for future generations’.<sup>83</sup>

50. Within the indigenous rights frame, the Committee understands children’s rights as mediated by their connection to the natural world, albeit principally through rights to culture and self-determination. The Convention applies this framework beyond indigenous rights pursuant to Article 24, children’s right to health, the only right to specifically invoke environmental protections. However, the Committee must go further, infusing all rights—especially the core protection of life, survival and development—with indivisible links between environmental protections and implicit obligations to future generations.

### ***Precautionary Principle & necessity of interim measures***

51. The precautionary principle requires that, where there are environmental threats of serious or irreversible damage to children’s right to life, States must take action to prevent catastrophic harm, even in the absence of scientific certainty about the outcome of environmental degradation.<sup>84</sup> In light of recent scientific evidence, it is reasonably foreseeable that States’ failure to reduce GHG will lead to catastrophic harm to children and future generations. The Committee’s interpretation of children’s right to life must engage a precautionary approach in order to protect this supreme right.
52. The irreparable harms and gravity of climate change necessitates urgent action, especially given the most recent scientific predictions, and the Precautionary Principle. Runaway climate change—the point at which GHG emissions surpass a remedial point—cannot be reversed or remedied; therefore, legal protections must focus on prevention. Interim measures are thus critically important to protect children’s right to life against the current and future climate harms caused by extractive industries. The Committee must engage in ‘preventive diplomacy’<sup>85</sup> and where necessary, find innovative ways to intervene in State actions or omissions that pose serious climate risks to children’s right to life. Interim measures must emphasize the risk and magnitude of the foreseeable harm rather than its temporal proximity. The threat of irreparable harm to entire generations— and the future of humanity itself— surely meets or surpasses threats that typically trigger interim measures (i.e. execution of a death sentence or the deportation of an individual facing a risk of torture).
53. CERD’s Early Warning and Urgent Action Procedures is an innovative mechanism designed to anticipate and prevent serious threats to covenant rights, including genocide.<sup>86</sup> Threats are assessed according to the ‘gravity and scale of the situation, including the escalation of violence or irreparable harm.’<sup>87</sup> CERD lists the racialization of

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<sup>83</sup> Ibid, Appendix I.

<sup>84</sup> Principle 15, Rio Declaration, UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992).

<sup>85</sup> ‘Guideline for the Early Warning and Urgent Action Procedures Annual Report’ UN Doc A/62/18 para 2.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid, para 12.

environmental pollution, and exploitation and displacement of indigenous peoples via extractive industries as triggers for urgent action.<sup>88</sup> This model of precautionary action and integration of environmental and human rights holds great promise for climate-related human rights claims, not only because it is precautionary, but also because it addresses the racialization of climate injustices. **We urge the CRC to focus on prevention and interim measures as key legal protections of children’s right to life in relation to climate change.**

## CONCLUSIONS & RECOMMENDATIONS

54. The greatest threat to children’s non-derogable right to life facing humanity today is the real potential for catastrophic climate destabilization, which would certainly result in severe violations of children’s rights across the globe, including the possibility of human extinction. Children all already suffering grave impacts of climate change. All nations must take immediate and urgent action to limit GHG emissions.
55. States must understand their obligations under the Convention to respect and protect children’s right to life against climate change. Protection of this right requires urgent and aggressive reductions in GHGs, principally through an immediate ban on States’ investment—through state-owned operations or subsidies to private business enterprises--in fossil fuel development and consumption. States’ participation in the development of ‘extreme energy projects’ such as tar sands or shale gas is a flagrant violation of children’s and future generation’s right to life, survival and development under the Convention.
56. States must immediately divest from fossil fuel development, production and consumption; enforce strict regulation of extractive industries, including requiring children’s rights impact assessments on all projects; and invest in rapid transition to renewable energy. Nothing less than urgent and aggressive actions to reduce GHG emissions--in line with scientifically derived emissions targets that ensure climate stabilization--are required for States to fully comply with their obligations to respect, protect and fulfil children’s right to life, survival and development.
57. We urge the Committee to ‘environmentalize’ States’ obligations in the understanding that future generations will not prevail in the face of catastrophic climate destabilization and ocean acidification. Interpretation of the right to life, survival and development through the above paradigmatic lens, which enshrines intergenerational and environmental dimensions, may be challenging to existing human rights models and practices, but international human rights bodies must act accordingly, creatively, and with precautionary action to stop this threat to the most fundamental right of children and future generations; the right to life, survival and development.

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<sup>88</sup> For example CERD/C/USA /DEC/1 or CERD/C/DEC/NZL/1.