

# The Right to a Healthy Environment in the Convention on the Rights of the Child

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The Center for International Environmental Law (CIEL) is pleased to contribute a written submission to the Day of General Discussion on Environment at the Committee on the Rights of the Child (the Committee). CIEL urges the Committee to articulate the right of the child to a healthy environment as implied in the Convention on the Rights of the Child (the Convention).

The Committee has recognized a variety of environmental issues, such as local sanitation and global climate change, as important and necessary factors to secure the full realization of the range of rights guaranteed to children by the Convention on the Rights of the Child. While this awareness has strengthened the Committee's ability to protect the rights of children, additional steps are needed to secure the full realization of children's rights, particularly in the face of the growing environmental and social crisis facing our planet.<sup>1</sup>

In that regard, the Committee's articulation of the Right of a Child to a Healthy Environment, as implied in the Convention on the Rights of the Child, would clarify State responsibilities to prevent, and protect against, environmental harms that impact children's rights. An implied recognition of the right to a healthy environment also would: (i) secure greater protection to children; (ii) recognize inter-linkages between protected rights and the environment; and (iii) identify preconditions necessary for fulfillment of all rights guaranteed under the Convention.

This written submission first explores why and how human rights law bodies have articulated implied rights. The submission then provides examples of implied rights in human rights jurisprudence. Next, the submission analyzes the links between a healthy environment and children's enjoyment of their Convention rights. This body of work shows that the recognition by the Committee of the right of the child to a healthy environment would be a highly significant step in the Committee's efforts to strengthen the system of protection for children's rights.

## I. Justification and Methodology for Implying Human Rights

Human rights bodies have often recognized human rights by implication in order to make the guarantees established in human rights instruments real, practical and effective. The recognition of rights by implication builds on the indivisibility of all rights, given the synergies that flow from the inter-linkages among rights. Implied rights underscore the necessary preconditions for the effective enjoyment of human rights, and in so doing, they help clarify State responsibilities. The recognition of implied rights

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<sup>1</sup> See U.N. Env't Programme, GEO-5 Environment for the Future We Want, at xviii, U.N. Doc. DEW/1417/NA (2012) (exploring global environmental degradation); see also Intergovernmental Panel on Climate Change, Climate Change 2014 Synthesis Report, 40 (2015), [http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR\\_AR5\\_FINAL\\_full\\_wcover.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf) (examining the effect of global climate change); G.A. Res. 70/1, U.N. Doc. A/RES/70/1, at 5 (Oct. 21, 2015) (describing the many "challenges to sustainable development").

strengthens the mechanisms of protection of rights so that the human rights project does not turn illusory in the face of new threats or changing circumstances.

Human rights bodies have implied human rights by applying the customary rules of treaty interpretation. As is well known, the Vienna Convention of the Law of Treaties codifies the basic framework for interpreting all treaties. Within this frame, human rights bodies have given special force to the teleological dimension of human rights treaties, in light of the particular character of human rights treaties as establishing not just obligations between States Parties but also rights in favor of individuals and groups that are fundamental to the legitimacy in the exercise of public authority. In that sense, the fulfilment of the object and purpose of human rights treaties, to safeguard the dignity of individuals and groups, requires that their provisions be made practical and effective.<sup>2</sup>

In addition to this general methodology in the interpretation of human rights instruments, regional systems of protection have also looked at national practices in delineating rights and state responsibilities. In the *Öcalan v. Turkey* case, the European Court of Human Rights regarded the practice of European States in regard to the abolition of the death penalty as legally significant in the interpretation of the European Convention on Human Rights.<sup>3</sup> In the case of *Kawas Fernandez v. Honduras*, the Inter-American Court of Human Rights considered the constitutional recognition of the right to a healthy environment in a number of countries in the region as legally significant to the interpretation of the right of freedom of expression in order to protect environmental human rights defenders.<sup>4</sup> In regard to these examples, the fact that more than 140 States have incorporated environmental rights in their national constitutions is legally significant in the evolving interpretation of the explicit and implied rights in the Convention.<sup>5</sup>

## II. Human Rights Bodies Have Consistently Implied Human Rights in their Jurisprudence

As examined above, developments in law and society may require the recognition of implied rights in order to ensure the continued relevance and effectiveness of human rights law. The following examples illustrates the practice by human rights bodies of articulating implied rights:

*1. The Human Rights Committee has implied the right of access to information on the basis of freedom of expression.*

The Human Rights Committee, in its revised general comment on Article 19 of the International Covenant on Civil and Political Rights, has noted that Article 19 (2) “embraces a right of access to information held by public bodies.”<sup>6</sup> The Human Rights Committee's recognition of the right of access to information as implied in the Covenant has enabled it to clarify the obligations incumbent upon State Parties. These include, *inter alia*, that States should make every effort to ensure easy, prompt, effective and practical access to such information protected by the right to information.<sup>7</sup>

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<sup>2</sup> *Velásquez Rodríguez v. Honduras*, No. 4, Inter-Am. Ct. H.R. (1988), at para 30; *Soering v. United Kingdom*, Eur. Ct. H.R. App. No. 14038/88 (1989), at para 87.

<sup>3</sup> *Öcalan v. Turkey*, Eur. Ct. H.R. App. No. 46221/99 (2005) at para 163 et seq.

<sup>4</sup> *Kawas Fernández v. Honduras*, Inter-Am Ct. of H.R. Ser. C No. 196 (Apr. 3, 2009) para 148 et seq.

<sup>5</sup> DAVID BOYD, *THE ENVIRONMENTAL RIGHTS REVOLUTION: A GLOBAL STUDY OF CONSTITUTIONS, HUMAN RIGHTS, AND THE ENVIRONMENT* 47 (2012).

<sup>6</sup> U.N. Human Rights Committee, General Comment No. 34: Article 19 Freedoms of Opinion and Expression, 12 September 2011, CCPR/C/GC/34, at para 18.

<sup>7</sup> *Id.*, para 19.

*2. The Committee on Economic, Social and Cultural Rights has implied the rights to water and sanitation in the International Covenant on Economic, Social and Cultural rights.*

In General Comment no. 15 on the right to water, the Committee on Economic, Social and Cultural Rights stated that, “The human right to water is indispensable for leading a life in human dignity. It is prerequisite for the realization of other human rights.”<sup>8</sup> This recognition of the right to water as implied in the Covenant on Economic, Social and Cultural Rights has allowed it to clarify the kind of steps that States should take to progressively realize the right to water, including the development of policy, strategy and action plans, in order to ensure that everyone has access to safe and secure drinking water and sanitation facilities.<sup>9</sup>

*3. The Inter-American Court on Human Rights has implied the right of indigenous peoples over their lands, territories and natural resources on the basis of right to property.*

The case of the *Mayagna Community (SUMO) Awas Tingni v Nicaragua*<sup>10</sup> concerned the right of indigenous peoples over their lands and territories. The Nicaraguan government had granted a timber concession to a foreign company to log within the Awas Tingni Community’s traditional lands. The Community alleged a violation of the right to property guaranteed under the American Convention on Human Rights as a result of the government’s failure to provide adequate recognition and protection of the Community’s customary land tenure. The Inter-American Court of Human Rights noted that, “human rights treaties are live instruments whose interpretation must adapt to the evolution of the times and, specifically, to current living conditions. [...] no provision may be interpreted as restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party”.<sup>11</sup> The Court held that “through an evolutionary interpretation of international instruments for the protection of human rights, taking into account applicable norms of interpretation [...], it is the opinion of this Court that article 21 of the Convention protects the right to property in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property [...]”.<sup>12</sup> The recognition of indigenous peoples’ right to land and territories has greatly contributed to strengthening their human rights protection in the Inter-American Human Rights System.

*4. The African Commission on Human and Peoples’ Rights implied the right to food and the right to housing on the basis of the right to enjoy the best attainable state of mental and physical health, the right to property, and the protection accorded to the family.*

The Social and Economic Rights Action Centre brought a case against Nigeria alleging that the military government had, through its business relationship with Shell Petroleum Development Corporation, exploited oil reserves in Ogoniland without regard for the health or environment of the Ogoni People, resulting in a violation of the African Charter on Human and Peoples’ Rights.<sup>13</sup> The African Commission on Human and Peoples’ Rights reasoned that although the African Charter does not explicitly provide for

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<sup>8</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 20 January 2003, E/C.12/2002/11, para 1.

<sup>9</sup> *Id.*, paras 25-29 and 37-38.

<sup>10</sup> *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-Am. Ct. H.R. No. 79 (2001).

<sup>11</sup> *Id.*, at paras 146-147.

<sup>12</sup> *Id.*, at para 148.

<sup>13</sup> *Social and Economic Rights Action Centre and Center for Economic and Social Rights v. Nigeria*, Afr. Comm’n. Human and Peoples Rights. Comm. No. 155/96 (2002), at para 10.

the right to housing or shelter, the combination of provisions protecting the right to enjoy the best attainable state of mental and physical health, the right to property, and the protection accorded to the family, forbids the destruction of houses or villages.<sup>14</sup> The African Commission further reasoned that, "the right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfillment of such other rights as health, education, work and political participation."<sup>15</sup> Consequently, the African Commission implied the right to housing and the right to food on the basis of other rights in the African Charter and concluded that the Nigerian Government had violated not only explicitly protected rights but also the rights to food and housing implicitly guaranteed.<sup>16</sup>

5. *The European Court of Human Rights has implied a right of access to court on the basis of right to a fair trial.*

The *Golder v. United Kingdom* case<sup>17</sup> arose out of refusal by the British Home Secretary to allow the applicant, serving a sentence of imprisonment, to consult a solicitor. The European Court of Human Rights stated that Article 6 (1) does not provide for a right of access to court in express terms, but it does by implication. The Court reasoned that, "It would be inconceivable that ... Article 6(1) should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court."<sup>18</sup> The Court concluded that "the right to access constitutes an element which is inherent in the right stated in Article 6 (1)," and it could therefore be properly implied therein.<sup>19</sup> The justification of implied rights has been confirmed in the Court's jurisprudence.<sup>20</sup>

### III. A Healthy Environment in the Convention on the Rights of the Child

The Convention on the Rights of the Child contains provisions that explicitly and implicitly relate to environmental protection. The Convention refers to environmental aspects directly and explicitly in relation to child health and education (Articles 24 and 29). The Convention implicitly protects a healthy environment in relation to the rights to life, survival and development (Article 6); food, water, and health (Article 24); an adequate standard of living (Article 27); and play and culture (Article 31). The realization of these rights is not possible without regard to the right to a healthy environment.

In addition to the explicit and implicit references to a healthy environment in relation to specific rights, a healthy environment is a *sine qua non* precondition for the effective implementation of the Convention as a whole. For example, the Committee noted environmental factors as serious impediments to the ability of Samoa to make progress in implementing the Convention; in its 2007 Concluding Observations, it stated that it "acknowledges the challenges faced by the State party, namely the country's vulnerability

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<sup>14</sup> *Id.*, at paras 60-62.

<sup>15</sup> *Id.*, at para 65.

<sup>16</sup> *Id.*, paras 62 and 64.

<sup>17</sup> *Golder v. the United Kingdom*, Eur. Ct. H.R. App. No. 4451/70.

<sup>18</sup> *Id.*, para 35.

<sup>19</sup> *Id.*, at para 36. The Court stated that the conclusion was "not an extensive interpretation forcing new obligations on the Contracting States", but one which was 'based on the very terms of the first sentence of Article 6(1) read in its context and having regard to the object and purpose of the Convention".

<sup>20</sup> See e.g., *James v. the United Kingdom*, Eur. Ct. H.R. App. No. 25119/09 (1986).

to natural disasters such as hurricanes, which at times pose serious difficulties for the full realization of children's rights enshrined in the Convention."<sup>21</sup>

In recognition of the implicit and explicit linkages between the Convention on the Rights of the Child and environmental protection, the Committee on the Rights of the Child has addressed environmental issues in numerous occasions. The Special Rapporteur on Human Rights and the Environment has examined the Committee's work relating to a healthy environment in detail, and thus his report provides material evidence for the Committee's recognition of the right of the child to a healthy environment as implied in the Convention.<sup>22</sup>

The following examples illustrate the indivisible linkages between rights protected under the Convention and the right to a healthy environment.

### *1. The child's right to life, survival and development*

The linkage between the right to life and the right to healthy environment is direct and indivisible. The child's right to life, survival and development hence requires the ban or control of activities causing environmental pollution or degradation that result in imminent danger to the life and development of children. In that respect, State responsibilities regarding the right to life include the prevention of exposure of the children to dangerous chemicals, such as endocrine disruptors or heavy metals. Exposure to heavy metals, including mercury or lead, that impact the normal brain development of children fall under the category of activities that need to be controlled in order to guarantee the life and development of children. According to the World Health Organization, childhood lead exposure is estimated to contribute to about 600,000 new cases of children developing intellectual disabilities every year.<sup>23</sup>

### *2. The child's right to health*

The right to health is one of the primary reference points for environmental rights in the Convention. Article 24(2)(c) expressly obliges states to consider, "the dangers and risks of environmental pollution" when combating diseases, undernourishment and malnutrition. The linkage between the right to health and the right to a healthy environment is thus direct and indivisible. As underlined by the Committee on Economic, Social and Cultural Rights, the normative content of the right to health incorporates the principle of non-discrimination, and its application requires all children to have equal access to safe environment.<sup>24</sup> States are further obligated to refrain from unlawfully polluting air, water and soil through industrial waste, and thereby interfering with the underlying determinants of the child's health.<sup>25</sup> Children exposure to toxic substances and neurotoxics also occurs through the use of products containing those substances, such as toys<sup>26</sup>, paints<sup>27</sup>, textiles,<sup>28</sup> and food containers.<sup>29</sup> Consequently,

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<sup>21</sup> U.N. CRC, 43<sup>rd</sup> Sess., No. 3, at para 67.

<sup>22</sup> John Knox, *Mapping Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Individual Report on the United Nations Convention on the Rights of the Child* (2014).

<sup>23</sup> *Lead Poisoning and Health Fact Sheet*, World Health Organization (July 2016), <http://www.who.int/mediacentre/factsheets/fs379/en/>

<sup>24</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, at para 22.

<sup>25</sup> *Id.*, para 34.

<sup>26</sup> Mert Guney & Gerald J. Zagury, *Toxic Chemicals in Toys and Children's Products*, 45(9) Environ. Sci. Technol., 3819 (2011)

<sup>27</sup> See *supra* note 23, at para 22.

State regulation of the use of toxic substances in products is also required to avoid infringing on children's right to health.

### 3. *The child's rights to food, water and sanitation*

The Committee on the Rights of the Child has implied state responsibilities regarding food, water and sanitation in regard to the right to health.<sup>30</sup> The linkages between the rights to food, water and sanitation and the right to a healthy environment provide further support to its recognition. Realizing the right to food largely depends on preserving a healthy environment,<sup>31</sup> which requires the adoption of appropriate environmental policies<sup>32</sup> as well as the sustainable use of resources.<sup>33</sup> For example, according to guidelines by the Food and Agriculture Organization, States should develop agro ecology solutions so as to restore soils and limit exposure to toxic substances impacting the health and neuro development of children.<sup>34</sup>

Similarly, the Committee on Economic, Social and Cultural Rights has observed that the right to water entitles everyone "to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use".<sup>35</sup> In particular, available water must be safe, *i.e.*, free from substances that constitute a threat to the child's health.<sup>36</sup> The Committee on Economic, Social and Cultural Rights has stressed that steps to fulfil the right to water must be designed such that this right can be realized by present and future generations.<sup>37</sup> Accordingly, the realization of the right to water depends directly on a healthy environment.

### 4. *The child's right to an adequate standard of living and the right to housing*

The Committee on the Rights of the Child has cited pollution as an impediment to the realization of the right to an adequate standard of living. In its Concluding Observations regarding Pakistan, for example, the Committee stated that it "is very concerned at the high number of children living in poverty, the shortage of adequate housing, clean water, adequate sanitation and sewage and the problem of air pollution, all of which have a serious negative impact on the living conditions of children in the State party, causing injuries, sickness and death".<sup>38</sup> As is the case with other rights, the linkage between the right to a standard of living and the right to a healthy environment is clear and direct.

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<sup>28</sup> *Chemicals in Textiles: Risks to a Human Health and the Environment*, Kemi Swedish Chemicals Agency (2014), <https://www.kemi.se/files/8040fb7a4f2547b7bad522c399c0b649/report6-14-chemicals-in-textiles.pdf>.

<sup>29</sup> Birgit Geueke, Charlotte Wagner & Jane Muncke, *Food Contact Substances and Chemicals of Concern: A Comparison of Inventories*, 31(8) *Food Additives and Contaminants*, 1438-1450 (2014).

<sup>30</sup> UN Committee on the Rights of the Child (CRC), General comment No. 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1, para 27 a.

<sup>31</sup> *Id.*, at para 8.

<sup>32</sup> *Id.*, at para 4.

<sup>33</sup> *Id.*, at para 7.

<sup>34</sup> *Agroecology to Reverse Soil Degradation and Achieve Food Security*, Food and Agric. Org. U.N. (2015), <http://www.fao.org/3/a-i4803e.pdf>.

<sup>35</sup> See *supra* note 7, at para 2

<sup>36</sup> *Id.*, at para 12 b.

<sup>37</sup> *Id.*, at para 11.

<sup>38</sup> U.N. CRC, 34<sup>th</sup> Sess., No. 5, at paras 224-225.

Moreover, the child's right to adequate housing is implied from the articulation of the right to an adequate standard of living in the Convention.<sup>39</sup> As confirmed by the Committee on Economic, Social, and Cultural Rights, adequate housing implies a right to basic infrastructure such as sustainable access to natural resources, clean drinking water and sanitation facilities, and orderly effluent and refuse disposal.<sup>40</sup> The right to housing also requires housing free of neurotoxics, such as lead in paint.

## Conclusions and Recommendations

This submission has shown why and how human rights bodies recognize and articulate implied human rights in order to strengthen systems of protection and make them effective in the face of changing historical conditions. The submission has also analyzed the key rights in the Convention on the Rights of the Child that clearly and directly depend on a healthy environment for their realization. The work of the Committee on the Rights of the Child already reveals the important and indivisible linkages between the Convention's rights and the right to a healthy environment.

The Committee should thus articulate the right of the child to a healthy environment as implied in the Convention on the Rights of the Child in order to secure and enhance the Convention's effectiveness. The serious environmental threats confronting children and future generations call for the strengthening of legal tools that can secure the continued, positive impact of the Convention on children's well-being.

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Submitted August 2016

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<sup>39</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, at para 7.

<sup>40</sup> *Id.*, at para 8b.