

# The Dignity Rights Project

*Dignity in Action*

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## **CLIMATE CHANGE AND THE DIGNITY RIGHTS OF THE CHILD**

This submission advocates in favor of intentionally considering the dignity rights that children possess in evaluating human-rights based responses to the consequences of climate change. Reflecting that the human dignity of children is disproportionately and distinctly threatened by climate change, it maintains that policy makers should take children’s substantive and procedural dignity rights into account in developing adaptive, mitigative, and compensatory responses to climate change.

This submission supports three basic points. First, that all persons, including children, have equal rights to human dignity. Second, that climate change threatens children’s dignity in discrete material, physical, psychological and emotional ways. Third, that there are demonstrable means to protect children’s dignity in the face of climate change.

### ***I. All Persons, including Children, have equal rights to Human Dignity.***

The concept of human dignity is essential to fashioning responses to climate change, and all persons -- including children -- have equal rights to what it holds. Human dignity is recognized as a foundational value and as a legal right in international law from the Universal Declaration of Human Rights (1948) to the Sustainable Development Goals (2015) and in most of the world’s constitutions. It is integral to public law, private law, criminal law, and administrative law in areas ranging from access to food, water, shelter, education, a sound environment to procedural rights of political participation and access to justice. “As constitutions explicitly protect human dignity, and courts [give it] meaning, people around the world increasingly develop a feeling of dignity—an

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internalized awareness of their own worth and of the power it carries.”<sup>2</sup> The United Nations has made its commitment to human dignity most recently in the Sustainable Development Goals: “We are determined to end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfill their potential in dignity and equality and in a healthy environment.”<sup>3</sup>

Although there is no uniform definition of what dignity is -- which leaves the concept of dignity open to interpretation -- it is generally understood in legal contexts to include the right to full development of the personality and the autonomy. That is, a fully autonomous person has the freedom to develop physically, mentally, socially, and spiritually as he or she chooses and, conversely, this full development of the personality contributes to each person's autonomy. Autonomy here includes the right to cultivate one's personality, to have control over one's environment, and to participate in decisions affecting oneself.

The Colombian Constitutional Court has tried to schematize the concept of dignity, noting that the phrase “human dignity” can manifest itself in two ways: from the point of view of the concrete object of protection and from the point of view of its normative function, echoing dignity's dual nature as a right and as a value. With respect to the first perspective, the Court has identified three clear and distinct lines: human dignity can be understood (1) as autonomy or the possibility of designing a life plan and self-determining according to his or her own desires (living as one wishes); (2) as entailing certain concrete material conditions of life (living well); and (3) as the intangible value of physical and moral integrity (living without humiliation).<sup>4</sup> The first of these has not only an individual dimension (that is, the right to individual self-determination) but a collective dimension as well (entailing the right to participate in decisions that affect one's community).

To fully appreciate children's dignity rights, it must first be acknowledged that children are human beings with the same rights to dignity as autonomous adults. These dignity rights are present at birth and are inalienable. In the Universal Declaration of Human Rights, dignity attaches to "all members of the human family" regardless of age.<sup>5</sup>

Second, it must be recognized that while children already have many rights under international and their own domestic constitutional or other laws, the right to dignity stands apart from other associated rights. This is so because a deprivation (of food, education, shelter, and so on) may constitute an independent and separate violation of the right to dignity in that such a deprivation *also* impinges a person's ability to fully develop his or her personality, to live with dignity and decency, to live without humiliation, and/or to participate in community with others.

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<sup>2</sup> E. Daly, *Dignity Rights: Courts, Constitutions, and the Worth of the Human Person* (Penn Press 2011).

<sup>3</sup> UN General Assembly, *Transforming our world : the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

<sup>4</sup> E. Daly, *Dignity Rights: Courts, Constitutions, and the Worth of the Human Person* (Penn Press 2011).

<sup>5</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1984, 217 A (III).

The right to dignity attaches to how people feel about themselves, how they develop, and how they live; it therefore is separately affected by lack of food etc. In essence, all of these other rights contribute to a child's self-worth -- the essence of the right to dignity.

The status of "childhood" is categorized as a special class specifically because of the development that occurs in this stage of life. But while children are still developing the capacity for inclusion and autonomy, dignity rights are nonetheless fully assimilated at birth. Therefore, they still have dignity rights even though they are understood and protected differently from how they would be for adults. During childhood, there is a partial if not complete dependency on the adults around children (depending on their age and other circumstances). But this dependency only makes children *more* vulnerable and *more* entitled to special protection of their dignity, rather than less.

Still, children have the same rights as adults -- even if the application and implementation of these rights is modified to account for the person's age -- and thus are entitled to have the possibility of designing a life plan and to self-determination (and to develop the wherewithal to exercise this right) on an individual and a collective level; to enjoy certain material conditions such as education, food and water, shelter, and health care -- all of which are especially important to the developing person; and to physical and moral integrity and protection from humiliation.

## ***II. Climate Change Threatens Children's Dignity in Material, Physical, Psychological and Emotional ways.***

Climate change poses particular threats to the development of children. Among the adverse effects of climate change on children are: (1) environmental displacement, which reduces opportunities for education and destabilize children's families and community structures; (2) food and water insecurity; (3) diminished health and reduced access to medical care; and, (4) reduced access to information, participation and justice. These factors disrupt a child's ability to realize their human dignity in the ways outlined below.

(1) **Environmental displacement** is at the root of many dignity implications of children as a result of climate change. Environmental displacement refers to the forced (non-voluntary) movement or migration of people including children within their own country or across national boundaries. It necessarily results in social instability, loss of familiar contexts, and the destruction of community. It disproportionately impacts children because they are less likely to have been in control of the decision to move and more likely to be the victims of forced environmental displacement.

Few children voluntarily make the decision to relocate themselves; rather they are forced to move due to climate related threats. In particular, environmental displacement tends to interfere with the pursuit of an education, an important contributor to the development of human dignity and

an independently recognized fundamental right.<sup>6</sup> Education becomes less accessible because displacement entails change of home and thus change of access to educational opportunities because transportation to school may become unavailable, and because educational resources may have also become scarce as a result of changed environmental conditions. Access can be disrupted due to flooding, infrastructure issues, and lack of transportation. Furthermore, many of the children marginalized by their environment through socio-economic deprivation, social exclusion, racism, and discrimination are also the most vulnerable to the effects of climate change.

All of these result in reduced opportunities for children to develop their personalities and to obtain the intellectual and social skills needed to become effective adults. It can also impinge on their own experience of dignity in the sense of their own self-worth and self-respect.

(2) Climate change also adversely affects **access to nutritious food and potable water**, which disproportionately affects children. Although international law already recognizes these as individual and collective rights,<sup>7</sup> it is also important to recognize the *dignity* impacts of inadequate access to nutritious food and to water. Children may be forced find food or raise income for their families which impedes their ability to gain education (see above) and may impede their self-esteem and sense of self-worth.

(3) Climate change contributes to more **acute and chronic health impacts** in children. Populations of children at particular risk include those who are: (a) living in severe and chronic poverty; (b) from racial and ethnic minority groups; (c) affected by drug and alcohol abuse; (d) in foster care and public institutions; (e) disabled and living with special health care needs that impair functions, etc.<sup>8</sup> Additionally, life-course epidemiology and science have advanced understanding of the mechanisms by which the complex ecology of social and environmental determinants generate and perpetuate child health disparities, which are amplified by climate change. Accordingly, children—already highly susceptible to illness will be left even more vulnerable to disease, if their dignity is not accounted for in the context of climate change.

Recognizing that social and environmental degradation, discrimination and marginalization of children, and climate change and globalization affect the health, welfare, and dignity of children more significantly than adults, medical professionals have adopted a paradigm of ‘child health equity’ that accounts for the unique vulnerability of children. Child health equity, as conceptualized here is composed of four elements: children's rights, social justice, human capital investment, and health equity ethics. The principles encompassed within these components provide perspective and

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<sup>6</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10; UN General Assembly, *Convention on the Rights of the Child, (Art. 28 of the Convention)* 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Policy Statement—Health Equity and Children's Rights*, The American Academy of Pediatrics (AAP), at 840, <http://pediatrics.aappublications.org/content/pediatrics/125/4/838.full.pdf>.

knowledge that can be integrated into climate change policy so as to ensure human dignity. Child health equity can be operationalized as tools, skills, and strategies for promoting children's health, address health disparities, and advance equity in child health. This matrix provides a rights-based perspective can be integrated into ethical decision-making, to address issues that go beyond primarily biomedical concerns, enrich dialogue and discussion, and provide new tools for climate change mitigation, child advocacy, and policy formulation, guided by principles of human dignity.

One important aspect of climate change is that it affects populations disproportionately, generally affecting already vulnerable peoples more than those who are most likely to be able to protect themselves from the adverse consequences of climate change. For example, it has been observed that in the wake of disaster, the dignity of children and their vulnerability to ill health are often overlooked.<sup>9</sup> While certain monetary costs following a natural disaster are inevitable, the exorbitant amount of funding necessary to restore a society following a natural disaster often fails to account for the impact the disaster has specifically on children's rights. The immense costs of repairing destroyed and damaged infrastructure, including schools and health clinics, reduce the budget available for fulfilling child rights. This will crowd out additional investments in health, education, and protection systems necessary to implement the provisions of the CRC and to reach CRC goal of universal realization of children's rights. For example, the damage from hurricanes that hit Haiti in late 2008 cost the country more than 1,000 lives and 15% of its GDP. In 2010, least- developed countries (LDCs) faced, on average, in excess of 10% of forgone GDP due to climate change and the carbon economy (defined as the costs in air pollution, human health, and hazardous occupations of a carbon-intensive energy system).<sup>10</sup> Failure to recognize that climate change is most discriminatory towards children poses a significant threat to the dignity rights of children.

(4) Climate change can also **disrupt access to information, participation and justice**, which again disproportionately affects children. Respect for the dignity of each person, including children, requires that they have the autonomy to participate in decisions that affect them.<sup>11</sup> The right to participate is also recognized in the Convention on the Rights of the Child, which stipulates that children have right to be heard and to participate in decisions that affect them.<sup>12</sup> Although, adherence to this requirement is legally required by all states that have adopted the CRC, children

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<sup>9</sup> *Policy Statement—Health Equity and Children's Rights*, The American Academy of Pediatrics (AAP), at 840. <http://pediatrics.aappublications.org/content/pediatrics/125/4/838.full.pdf>

<sup>10</sup> *Climate Change, Children's Rights, and the Pursuit of Intergenerational Climate Justice*, Elizabeth D. Gibbons, Health and Human Rights Journal (June, 2014), at 7.

<sup>11</sup> *Policy Statement—Health Equity and Children's Rights*, The American Academy of Pediatrics (AAP), at 843. <http://pediatrics.aappublications.org/content/pediatrics/125/4/838.full.pdf>.

<sup>12</sup> "1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." UN General Assembly, *Convention on the Rights of the Child*, at Article 12.

often remain voiceless in climate change policy. Children are being forced to adapt to the effects of climate change without opportunities to obtain information or to participate in decisions that will affect them. Thus, children are often forced to act as an object for the decisions made by those in power and unable to act as their own autonomous agents or subjects as rights-holders.

Children have a right to be heard in all matters affecting them, including climate change. Too often, it is assumed that children simply cannot be included in discussions regarding ‘adult matters’ because they lack the capacity to understand what is going on. However, while children may not have the language to articulate the dignity implications they suffer as a result of climate change, children possess the capacity to understand the nexus between the changes in their environment and the repercussions they suffer.<sup>13</sup> Children therefore are capable of contributing and should -- to respect their dignity as rights-bearing members of the human family -- be accorded the platform and the power to voice their concerns, ideas, and sufferings related to climate change. Furthermore, childhood responsibilities are key to multigenerational citizenship, including the voluntary assumption of the duty to contribute to public policy decisions.<sup>14</sup>

Children pay attention to how they are affected by a changing climate. A research project published by Children in a Changing Climate,<sup>15</sup> which includes children from Kenya and Cambodia who were victims of climate related flooding, droughts, and displacement, demonstrates that children not only have the capacity to understand information regarding climate change, but are able to analyze its impact and propose possible solutions to the particular threats they currently face, and will face in the future.<sup>16</sup> Children have the ability to perceive risks that are particular to their circumstances and in return propose child-friendly solutions to those risks.<sup>17</sup> The effects of climate change are disproportionately affecting children; therefore, it is necessary to support the involvement of children in developing solutions to these global issues. This is true both because it is the right of children to be included and because inclusion of *all* stakeholders will yield solutions that recognize the interests and the dignity of all members of the community -- including the youngest ones.

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<sup>13</sup>E. Polack, *Child Rights and Climate Change Adaptation: Voices from Kenya and Cambodia* (Children in a Changing Climate 2010).

<sup>14</sup> G. Van Bueren, *Multigenerational Citizenship: The Importance of Recognizing Children as National and International Citizens*, *The Annals of American Academy of Political and Social Science*, Vol. 633, *The Child as Citizen* 30-51 (Sage Publications, Inc. 2011).

<sup>15</sup> E. Polack, *Child Rights and Climate Change Adaptation: Voices from Kenya and Cambodia* (Children in a Changing Climate 2010).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

### ***III. There are Demonstrable Means to Protect Children's Dignity in the Face of Climate Change.***

The experiences of children during childhood profoundly affect their physical, cognitive, emotional, and social development. As noted above, when children are affected by the impacts of climate change, they are at risk for severe environmental threats, epidemiological diseases, displacement, and social disruption.

Two recent court decisions suggest that children's dignity claims in the face of climate change may be judicially recognized. In *Urgenda Foundation v. The State of the Netherlands*,<sup>18</sup> the court held that tort law provides a basis for holding that the government owes citizens a duty of care to protect them from the consequences of climate change<sup>19</sup>. Under Dutch law, the government can be held accountable for failure to take adequate measures to prevent foreseeable harm. Accordingly, Urgenda argued that because the government had acknowledged that the measures currently being taken by the State to avoid the damaging effects of climate-changing gas emissions is inadequate, the government therefore knowingly exposed citizens to environmental dangers.

Additionally, some international courts have recognized the right to dignity, which includes the right to a healthy environment. For example, in *Gbemre v. Shell Petroleum*, individuals in Nigeria argued successfully that flaring natural gas lead to a variety of adverse effects, such as, respiratory diseases, increase in CO2 emissions, and agricultural inadequacies, and hence contravened a constitutional right to life and dignity.<sup>20</sup> The court held that Nigerian citizens are entitled to full respect for their lives and dignity of their persons including the entitlement to an adequate environment that is favorable to their development.

Lastly, some courts have been especially sensitive to the adverse impacts that environmental consequences can have on children. For example, in *Minors Oposa v. Factoran*,<sup>21</sup> the Supreme Court of the Philippines held that governmental grants of contracts to harvest some of the island's last remaining virgin forests contravened litigant and advocate Anthony Oposa's children's constitutional rights to a quality environment, and more general notions of intergenerational equity.

We appreciate the opportunity to provide these remarks.

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<sup>18</sup> *Urgenda Foundation v. The State of the Netherlands*, (24 June 2015) C/09/456689/HA ZA 13-1396 (Netherlands).

<sup>19</sup> *Urgenda Foundation* at, 4.75.

<sup>20</sup> *Gbemre v. Shell Petroleum Dev. Co. Nigeria Ltd.*, (2005) EHC/B/CS/53/05 FHCNLR (Nigeria).

<sup>21</sup> *Minors Oposa v. Factoran*, G.R. No. 101083, July 30, 1993, On the State's Responsibility (Phillippines).