

**Submission to the UN Special Rapporteur on Human Rights and the
Environment**

October 31, 2017

The Center for International Environmental Law (CIEL) welcomes the opportunity to submit written information following the call for inputs due in October 2017 on the environment and the rights of the child.

We would like to address in more details the question 5 put forward by the Prof. Knox in his questionnaire regarding the existence of laws or policies referring to the rights of future generations in relation to environmental matters.

We hope that the input might still be helpful for the preparation of the report despite the delayed submission and remain at the disposal of the UN Special Rapporteur in case further information on the issues addressed in this submission might be helpful for his work.

Additional information addressing some of the other questions included in the questionnaire might also be found in the written submission prepared by CIEL in the context of the 2016 Day of General Discussion held by the Committee on the Rights of the Child.

<http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/CIEL.pdf>

Respectfully,

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1. Intergenerational Equity as a Principle of International Environmental Law

Intergenerational equity and the duties of present generations towards future generations have long been recognized as fundamental principles of international environmental law.

Recognition of and respect for these principles inheres in the foundational documents of the UN system and they have been reaffirmed, amplified, elaborated and progressively operationalized through nearly seven decades of international law, policy and--to an insufficient extent--practice.

The principle of responsibility towards future generations is embodied in the the core objectives of the 1945 UN Charter, beginning by stressing the necessity to save succeeding generations from the scourge of war.¹ Since 1945 this principle has been reiterated through key consensual declarations regarding the principles of international environmental law and in numerous legally-binding multilateral agreements.

The 1972 Stockholm Declaration on the Human Environment begins by highlighting that man “bears a solemn responsibility to protect and improve the environment for present and future generations.”² It further stresses that

*The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management.*³

This principle was repeatedly reaffirmed in the report of the 1987 World Commission on Environment and Development, widely known as the Brundtland Commission.⁴ The report defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁵ The report further emphasized that “sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development; and institutional change are all in harmony and enhance both current and future potential to meet human

¹ United Nations, *Charter of the United Nations*, adopted in June 1945, preamble.

² United Nations, *The Stockholm Declaration on the Human Environment*, adopted in June 1972, UN Doc. A/Conf.18/14/Rev 1(1973) (hereinafter “Stockholm Declaration”), principle 1.

³ *Stockholm Declaration*, principle 2.

⁴ *Report of the World Commission on Environment and Development to General Assembly, “Our Common Future”* (A/42/427, 4 August 1987) (hereinafter, “Brundtland Report”).

⁵ *Brundtland Report*, paragraph 1.

needs and aspirations.”⁶ The Brundtland Commission emphasized that meeting this obligation of sustainability requires the enforcement of wider responsibilities for the impacts of decisions. [...]Some necessary changes in the legal framework start from the proposition that an environment adequate for health and well-being is essential for all human beings including future generations.”⁷

The 1992 Rio Declaration on the Environment and Development crystallized these obligations to future generations as an emerging principle of international environmental law, highlighting that the “right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”⁸

Forty-four international legal instruments explicitly incorporate or reference the principle of intergenerational equity and/or to the need to preserve the rights and the interests of future generations.

The international legal regime established under the 1992 UN Framework Convention on Climate Change (UNFCCC) also builds upon and reiterates the principle of international equity and the need to protect the climate system for future generations. The resolution adopted in 1990 by the UN General Assembly to provide a mandate for the negotiations of a new legal instrument aimed at addressing climate change explicitly refers to the “protection of global climate for present and future generations of mankind”.⁹ This objective is recalled in the preamble of the UNFCCC.¹⁰ Article 3 of the UNFCCC defining the principles for the new regime provides that “the 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.” The Paris Climate Agreement adopted in 2015 reiterates the principle, recalling that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights [...] as well as intergenerational equity.”¹¹

Still other international legal agreements elaborate on the how the duties owed to future generations both underly and inform the other obligations defined in their provisions. The UN Economic Commission for Europe (UNECE) Aarhus Convention, for

⁶ *Brundtland Report*, paragraph 15.

⁷ *Brundtland Report*, paragraph 76.

⁸ Report of the United Nations Conference on Environment and Development, 3 to 14 June 1992 (A/CONF.151/26/Rev. 1 (Vol. I), A/CONF.151/26/Rev. 1 (Vol. II), A/CONF.151/26/Rev. 1 (Vol. III)) (hereinafter “Rio Declaration”), principle 3.

⁹ United Nations, *General Assembly Resolution on the Protection of global climate for present and future generations of mankind*, A/RES/45/212, 21 December 1990.

¹⁰ UNFCCC, preamble.

¹¹ Paris Agreement, preamble.

example, highlights that the guarantee of procedural rights in environmental decision-making is necessary to “contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being”.¹² The UN Educational, Scientific and Cultural Organisation (UNESCO) Convention stresses the “duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage.”¹³ The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes provides that “[w]ater resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.”¹⁴

The International Court of Justice relied on the principle of sustainable development and its intergenerational component in its ruling on the *Gabcíkovo-Nagymaros* dispute.¹⁵ Taking stock of the normative developments described previously, the Court emphasized that

“Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.”¹⁶

Judges of the International Court of Justice have increasingly relied on this principle. In a 1993 opinion in *Denmark v Norway*, Judge Weeramantry emphasized that global jurisprudence supported the notion of equity, with “respect for the rights of future generations, and the custody of earth resources with the standard of due diligence expected of a trustee” as the key principle contained in this notion.¹⁷

In its 1996 *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, the Court stated unanimously that:

¹² UNECE, *Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters*, adopted in June 1998. 2161 UNTS 447, (hereinafter, “Aarhus Convention”), article 1.

¹³ UNESCO, *Convention Concerning the Protection of the World Cultural and Natural Heritage*, adopted in November 1972, 1037 UNTS 151; 11 ILM 1358 (1972), article 4.

¹⁴ UNECE, *Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, adopted in November 1992, 1936 UNTS 269, article 5.c.

¹⁵ *Gabcikovo-Nagymaros Project (Hungary/ Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7.

¹⁶ *Id.*, paragraph 140.

¹⁷ *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, *Separate opinion of Judge Weeramantry*, Judgment, I.C.J. Reports 1993, , paragraph 240.

“... the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.”¹⁸

Judge Weeramantry stressed that:

“... the rights of future generations have passed the stage when they were merely an embryonic right struggling for recognition. They have woven themselves into international law through major treaties, through juristic opinion and through general principles of law recognized by civilized nations.”¹⁹

The recognition of the principles of sustainable development and inter-generational equity was reiterated more recently by Judge Cañado Trindade in the *Pulp Mills* case.²⁰

Several authoritative analyses also support the recognition of intergenerational equity as a principle that must guide environmental policies. These statements are relevant to the present case given that "judicial decisions and the teachings of the most highly qualified publicists of the various nations" shall serve as subsidiary means for the determination of rules of law.²¹

The International Law Association (ILA), in its 2002 New Delhi Declaration on the Principles of International Law relating to Sustainable Development, recognized that the principle of equity is a key component of international law.²² The ILA stressed that the principle of equity refers to “both inter-generational equity (the right of future generations to enjoy a fair level of the common patrimony) and intra-generational equity”.²³ It emphasized that “the present generation has a right to use and enjoy the resources of the Earth but is under an obligation to take into account the long-term impact of its activities and to sustain the resource base and the global

¹⁸ ICJ Reports 1996, pp 241-242, para. 29. This paragraph is also cited in the Court’s ruling in *Gabčíkovo-Nagymaros Project (Hungary-Slovakia)*, Judgment (ICJ Reports 1997) para. 53 & 112.

¹⁹ Dissenting from the Court’s split decision (seven votes to seven, decided by President’s casting vote) that: “the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.”

²⁰ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Separate Opinion of Judge Cañado Trindade, Judgment, I.C.J. Reports 2010, p. 164.

²¹ *Statute of the International Court of Justice*, article 38.1.d.

²² *ILA New Delhi Declaration on the Principles of International Law relating to Sustainable Development* (and commentary), 2002 (hereinafter “New Delhi Declaration”).

²³ *Id.*, paragraph 2.1.

environment for the benefit of future generations of humankind”.²⁴ The ILA further insisted on the importance of the principle of “integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives”, noting that this principle reflected the interdependence of the needs of current and future generations.²⁵

The duty to preserve the environment for the future generations is also acknowledged by the Institut de Droit International. In its 1997 resolution on responsibility and liability under international law for environmental damage, the Institute emphasized that “Impairment of [...] inter-generational equity, and generally equitable assessment should be considered as alternative criteria for establishing a measure of compensation” for environmental damage.²⁶

Significantly for purposes of the present case, the International Law Commission’s rapporteur on the issue of the obligation of States to protect the atmosphere noted in his 2016 report to the Commission that the principle of equity that guides the international response to climate change “calls for an intergenerational equitable balance between the present generation and future generations of humankind”.²⁷ The rapporteur amplified and further elaborated this point in his 2017 report, observing that “equitable and reasonable utilization of the atmosphere should also take into account the interests of future generations of humankind.”²⁸ The rapporteur further observed the growing incidence of domestic court decisions in a number of countries upholding the rights of minors to challenge government actions with respect to climate change, and the recognition of standing in such suits on the grounds, *inter alia*, that governments are “trustees for the management of common environmental resources.”²⁹

2. Obligation of National Governments to Protect the Right of Future Generations to a Healthy Environment

The rights of future generations or the principle of intergenerational equity in matters related to environmental policies are recognized and protected in a rapidly

²⁴ *Ibid.*, paragraph 2.2.

²⁵ *Ibid.*, paragraph 7.1

²⁶ Institut de Droit International, *Resolution on Responsibility and Liability under International Law for Environmental Damage* 1997.

²⁷ United Nations, General Assembly, *Report of the International Law Commission, Sixty-eighth session (2 May- 10 June and 4 July -12 August 2016)*, Chapter VIII Protection of the Atmosphere, A/71/10, 2016, p. 281.

²⁸ United Nations, General Assembly, *Report of the International Law Commission, Sixty-ninth session (1 May-2 June and 3 July-4 August 2017)*, *Fourth Report on the Protection of the Atmosphere*, A/CN.4/705 (31 January 2017), paragraph 87.

²⁹ *Id.* paragraph 88.

growing number of national constitutions. At present, no fewer than sixty-three national constitutions include explicit provisions articulating the right of future generations to a healthy environment, define duties for the States towards future generations or enshrine intergenerational equity as a core principle for environmental and developmental policies.³⁰ The number of these constitutional provisions has increased four-fold over the past thirteen years, reflecting the growing and increasingly commonplace recognition by States of the rights of future generations and the principle of intergenerational equity. The incorporation of these principles in subnational constitutions within many countries, (including, for example, several US states) affords further evidence of their increasing recognition as general principles of law within many of the world's legal systems.

The nature of these provisions and the scope of the duties that they provide for governments vary among constitutions. Article 112 of the Norwegian Constitution is particularly explicit in not only recognizing the right for future generations but emphasizing the positive obligations of the State to protect this right.

Paralleling these developments, a growing body of jurisprudence elaborating on the nature and the scope of the State's duty to future generations has emerged across a diverse range of jurisdictions. This case law is of value in more precisely delineating the obligations of the State related to the rights of future generations to a healthy environment and to the management of natural resources in line with the principle of intergenerational equity.

In 1987 the Supreme Court of India invoked the principle of intergenerational equity as provided in the Stockholm Declaration in concluding that the State must endeavor to protect and improve the environment and to safeguard the country's ecosystems.³¹ In the ensuing decades, judicial rulings in ten jurisdictions have relied on the concept of intergenerational equity to order the States to protect the environment or to cancel administrative decisions that had been made without sufficiently taking into account the interests of future generations.

In *Oposa v. Factoran*, the Supreme Court of the Philippines accepted that plaintiffs could file a petition on behalf of succeeding generations to denounce logging licences. The Court ruled that "their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned."³² A Dutch

³⁰ See Annex 1.

³¹ *M.C. Mehta v. Union of India and others*, Supreme Court of India, December 20, 1986. 1987 SCR (1) 819.

³² *Oposa et al. v. Fulgencio S. Factoran, Jr. et al* (G.R. No. 101083), Supreme Court of the Philippines, 30 July 1993.

district court also accepted to consider the petitioning organization could represent the interests of current and future generations of Dutch nationals.³³

The *Oposa* ruling affirmed that natural resources are held in trust for the benefit of present and future generations and that the government was consequently required to protect this resource. Courts in other countries have built on the recognition of the public trust doctrine to request that the government protects national parks (Australia), rivers (Kenya) and forests (India) for the benefit of present and future generations.³⁴

Jurisprudence from the highest levels of judiciary in many countries provides guidance regarding the scope of obligations owed vis a vis future generations. In the *Manila Bay Case*, the Supreme Court of the Philippines stressed that even in the absence of a categorical legal provision specifying the legal obligations of the authorities with regards to the protection of the waters of the Bay, the authorities “cannot escape their obligation to future generations”.³⁵ The Supreme Court of India ruled in *Indian Council for Enviro-Legal Action v. Union of India* that the government must enforce environmental laws effectively as violation of these laws would result in pollution, the “adverse effect of which will have to be borne by the future generations.”³⁶ In *M.C. Mehta v. Union of India*, the Court concluded that, in the absence of adequate action by the government, “it becomes the duty of the Court to direct such steps being taken are necessary for cleaning the air so that the future generations do not suffer from ill-health.”³⁷

In *Jagannath vs Union Of India & Ors*, India's Supreme Court requested an environmental and social impact assessment to be conducted prior to the authorization of new shrimp processing facilities.³⁸ The Court ruled that such assessment should specifically “take into consideration the inter-generational equity”. The Supreme Court reached a similar conclusion in a case related to licenses for logging granted without prior assessment of the long-term implications of the

³³ *Urgenda Foundation v. The State of the Netherlands*, C/09/456689/HA ZA 13-1396, Hague District Court, 24 June 2015 (hereinafter, “Urgenda”).

³⁴ *Willoughby City Council v Minister Administering the National Parks and Wildlife Act, Land and Environment Court of New South Wales*, (1992) 78 LGERA 19 (ss 47B, 47G, 471); *Peter K. Waweru (applicant) and Republic (respondent)*, (2007) AHRLR 149 (KeHC 2006), High Court of Kenya at Nairobi, 2 March 2006; *State of Himachal Pradesh and others (Appellants) v. Ganesh Wood Products and others (Respondents)*, AIR 1996 SC 149, Supreme Court of India, 11 September 1995.

³⁵ *Metropolitan Manila Bay Development Authority v Concerned Residents of Manila Bay.*, G.R. Nos. 171947-48, Supreme Court of the Philippines, 18 December 2008.

³⁶ *Indian Council for Enviro-Legal Action and others v. Union of India and others*, 1996 AIR 1446, Supreme Court of India, 13 February 1996.

³⁷ *M.C. Mehta v. Union of India, Tanneries Case*, AIR 1997 SC 734, Supreme Court of India, 22 September 1987.

³⁸ *S. Jagannath vs Union of India & Ors*, (1996) INSC 1592, Supreme Court of India, 11 December 1996.

exploitation of these natural resources.³⁹ The Court stressed that “the present generation has no right to deplete all the existing forests and leave nothing for the next and future generations.” In a case related to the installation of a fossil fuel processing facility, the Supreme Court of India drew on the principle of intergenerational equity as reflected in several multilateral environmental agreements to find an affirmative duty on the part of the present generation towards generations to come.⁴⁰

2.1. Duties to regulate corporate activities that adversely impact rights of future generations

National courts in several countries have also elaborated on the obligation of the state to regulate the activities of private corporations in a manner that prevents impacts on adverse impacts on the rights and interests of future generations.

In *Rodgers Muema Nzioka v. Tiomin Kenya Ltd*, the High Court of Kenya cited the principle of intergenerational equity to grant an injunction restraining a mining company from carrying out acts that would be particularly damaging for the environment.⁴¹ In a similar case in Sri Lanka, the court invoked the principle of intergenerational equity to prohibit mining conducted in a manner that would undermine the interests of future generations.⁴² The Supreme Court of India ruled in *Water Users Association v. The Gov of A.P. W.P* that the granting of irrigation licenses by the authorities must be informed by the principle of sustainable development as defined in the 1987 report of the Brundtland Commission.⁴³ In *Soman v. Geologist*, the Kerala High Court rejected a request to lift environmental regulations imposed on a petitioner, holding that the quality of the soil must be preserved for future generations.⁴⁴ In a subsequent case, the Supreme Court ruled again that the principle of sustainable development, in its emphasis on the necessity to preserve the ability for future generations to meet their own needs, should be followed “in letter and spirit”. The Court thereby ordered the protection of grazing land and rejected its acquisition for an industrial project.⁴⁵ In *K.M. Chinnappa v. Union of India W.P.*, the

³⁹ *State of Himachal Pradesh and others v. Ganesh Wood Products and others*, AIR 1996 Supreme Court 149, Supreme Court of India, 11 September 1995.

⁴⁰ *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.)* S.O.L. Case No. 53, Supreme Court of India, 15 March 1999.

⁴¹ *Rodgers Muema Nzioka v. Tiomin Kenya Ltd* (97 of 2001), Civil Case No. 97 of 2001, High Court of Kenya at Mombasa, 21 September 2001.

⁴² *Bulankulama v. Min. of Industrial Development (Eppawala case)*, (2000) LKSC 18, Court of Sri Lanka, 7 April 2000.

⁴³ *Water Users Association v. The Gov of A.P. W.P.*, High Court of Judicature of Andhra Pradesh at Hyderabad, 6 February 2002.

⁴⁴ *Soman v. Geologist*, 2004 (3) KLT 577, Kerala High Court (India), 24 August 2004.

⁴⁵ *Karnataka Industrial Areas. vs Sri C. Kenchappa & Ors*, Supreme Court of India, AIR 1996 SC 1350 (2006), 12 May 2006.

Supreme Court again relied on this principle to order the protection of forests threatened by the exploitation of mineral resources.⁴⁶ The Court stated as follows:

*We owe a duty to future generations and for a bright today, bleak tomorrow cannot be countenanced. We must learn from our experiences of past to make both the present and the future brighter. We learn from our experiences, mistakes from the past, so that they can be rectified for a better present and the future.*⁴⁷

South Africa's Supreme Court of Appeal also referred to the necessity to preserve the ability of future generations to meet their own needs in a judgment confirming an administrative decision to cancel a coal mining license due to consequences for sustainable development.⁴⁸ The Argentinian National Supreme Court of Justice has also invoked the necessity to prevent long-term and irremediable damage that would affect future generations to justify the cancellation of logging and clearing licenses.⁴⁹ In *Salas, Dino y otros v Salta, Provincia de y Estado Nacional*, the court stated that “[one] should not look for opposition between [the protection of the environment and development], but complementarity, since the protection of the environment does not mean stopping progress, but, on the contrary, making it more enduring over time so that future generations can enjoy it.”

The decision of the Supreme Court of Pennsylvania in the *Robinson Township v. Commonwealth of Pennsylvania* case is also particularly informative in the context of the petition submitted by Greenpeace and Natur og Ungdom.⁵⁰ The court was asked to review the conformity of an expedited procedure for the approval of shale gas licenses with article 1 section 27 of the Pennsylvania Constitution. This provision shares key similarities with article 112 of the Norwegian Constitution, in particular its reference to future generations and its provision of a positive duty for the State. Article 1 section 27 reads as follow:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including

⁴⁶ *K.M. Chinnappa, T.N. Godavarman Thirumalpad v. Union of India & Ors*, (2002) SC 1386, Supreme Court of India, 30 October 2002.

⁴⁷ *Id.*

⁴⁸ *The Director: Mineral Development, Gauteng Region, Sasol Mining (PTY) LTD/V. Save the Vaal Environment, Ronsand ranch (PTY) LTD, Giovanni Alberto Mario Ravazzotti, Susan Sellschop, Lynne Dale Green*, [1996] 1 All SA 2004 (T), Supreme Court of Appeal of South Africa, 12 March 1999.

⁴⁹ *Salas, Dino y otros C/ Salta, Provincial de y Estado Nacional s/ amparo.*, S. 1144. XLIV, Corte Suprema de Justicia de la Nación, Capital Federal, Ciudad Autonoma de Buenos Aires, 26 March 2009

⁵⁰ *Robinson Township v. Commonwealth of Pennsylvania, Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (plurality), Supreme Court of Pennsylvania, 2012. The Pennsylvania Supreme Court reaffirmed and extended this ruling in [Pennsylvania Environmental Defense Foundation v. Commonwealth](#), No. 10 MAP 2015 (Pa. June 20, 2017).

generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

The court held the expedited procedure unconstitutional as it failed to preserve the interests of future generations. It noted that “The second, cross-generational dimension of Section 27 reinforces the conservation imperative: future generations are among the beneficiaries entitled to equal access and distribution of the resources, thus, the trustee cannot be short-sighted.” The court further argued that “section 27 recognizes the practical reality that environmental changes, whether positive or negative, have the potential to be incremental, have a compounding effect, and develop over generations. The Environmental Rights Amendment offers protection equally against actions with immediate severe impact on public natural resources and against actions with minimal or insignificant present consequences that are actually or likely to have significant or irreversible effects in the short or long term.”⁵¹

2.2. Duties of the State to consider intergenerational equity in government actions affecting climate change

Courts in the Netherlands and in Pakistan have ruled that intergenerational equity must inform national climate policies. In the *Urgenda* decision, the court found that “the State, in choosing measures, will also have to take account of the fact that the costs are to be distributed reasonably between the current and future generations.”⁵² In the *Ashgar Leghari v. Federation of Pakistan* ruling, the Supreme Court of Pakistan stated that, when defining the legal obligations of the State to protect its citizens from the impacts of climate change, fundamental rights must be “read with [...] the international environmental principles of sustainable development, [...] inter and intra-generational equity and public trust doctrine.”⁵³

3. Duties to Future Generations under International Human Rights Law

Additionally, human rights treaties codify the duty of the Norwegian government to guarantee that future generations can exercise their rights related to a clean and healthy environment. In its 2013 report to the UN General Assembly on Intergenerational solidarity and the needs of future generations, the UN Secretary General noted the necessity to interpret human rights instruments in the context of intergenerational equity. The Secretary General emphasized that “the basis for our moral obligations towards future people is thus argued to be simply the equal

⁵¹ *Robinson Township*, *supra* note 54.

⁵² *Urgenda*, *supra* note 37.

⁵³ *Ashgar Leghari v. Federation of Pakistan*, (W.P. No. 25501/2015), Lahore High Court Green Bench, 25 September 2015.

concern and respect we owe to all humans, regardless of where and when they may have been born.”⁵⁴

The Committee on Economic, Social and Cultural Rights (CESCR) has emphasized that certain specified rights protected under the International Covenant on Economic, Social and Cultural Rights must be protected not only for present but also for future generations. In its 1999 General Comment 12 on the right to adequate food, the CESCR has specifically emphasized that article 11 of the ICESCR requires governments to protect this right for both present and future generations.

*The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. The precise meaning of “adequacy” is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while “sustainability” incorporates the notion of long-term availability and accessibility.*⁵⁵

The CESCR also stressed in its 2003 General Comment 15 on the Right to Water that this right implies a duty to guarantee the protection of this right for future generations.

11. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.

*28. States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations.*⁵⁶

UN Special Procedures mandated by the Human Rights Council have further elaborated the responsibilities of States towards future generations on the basis of international human rights instruments. In his 2008 report, the UN Special Rapporteur on toxic and dangerous products noted that “States need to take into account the future costs and long-term consequences of environmental degradation, as well as their obligation to save future generations from a multitude of health problems.”⁵⁷ Building on the CESCR general content related to the right to water, the

⁵⁴ United Nations, General Assembly Report, *Intergenerational solidarity and the needs of future generations Report of the Secretary-General*, A/68/322, August 2013.

⁵⁵ Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 12: The Right to Adequate Food (Art. 11)*, E/C.12/1999/5 (12 May 1999).

⁵⁶ Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, E/C.12/2002/11 (20 January 2003).

⁵⁷ United Nations, General Assembly, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report of the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous*

Special Rapporteur on safe drinking water pointed to the obligation for the government of Uruguay to “ensure the realization of the right to water, in a sustainable manner and without discrimination, for present and future generations”.⁵⁸

The UN Special Rapporteur on extreme poverty also addressed this specific issue in a manner that is directly relevant to the present case. In its 2012 report on its mission to Timor, the Special Rapporteur recommended that the government “must strengthen efforts to diversify the non-oil economy, build sustainable industries, and ensure the preservation of its natural resources for future generations”.⁵⁹

Products and Wastes on the Enjoyment of Human Rights, Okechukwu Ibeanu, A/HRC/9/22, August 2008.

⁵⁸ United Nations, General Assembly, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Mission to Uruguay (13 to 17 February 2012)*, A/HRC/21/42/Add.2, July 2012.

⁵⁹ United Nations, General Assembly, *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, Mission to Timor-Leste, A/HRC/20/25/Add.1, May 2012.*

- ANNEXES -

- ANNEX 1 –

**LIST OF NATIONAL CONSTITUTIONS WITH EXPLICIT REFERENCES TO
INTERGENERATIONAL EQUITY**

Albania, 1998 (rev. 2012), Article 59(e)	Guyana 1980 (rev. 2009), Article 149J(2)
Andorra, 1993, Preamble and Article 31	Hungary 2011 (rev. 2013), Preamble, Article P(1) and Article 38(1)
Angola, 2010, Article 39(2)	Iran (Islamic Republic of) 1979 (rev. 1989), Article 50
Argentina, 1853 (reinst. 1983, rev. 1994), Article 41	Japan, 1946, Article 11
Armenia, 1995 (rev. 2005), Preamble and Article 48(10)	Kenya 2010, Preamble and Article 42(a)
Austria, 1920 (reinst. 1945, rev. 2013), Article 14(5a)	Latvia 1922 (reinst. 1991, rev. 2014), Preamble
Belgium 1831 (rev. 2014), Article 7bis	Lesotho 1993 (rev. 1998), Article 36
Bhutan 2008, Article 5(1)	Luxembourg 1868 (rev. 2009), Article 11bis
Bolivia (Plurinational State of) 2009, Article 9(6), Article 33 and Article 108(15)	Madagascar 2010, Preamble
Brazil 1988 (rev. 2015), Article 225	Malawi 1994 (rev. 1999), Article 13(1.iii)
Burundi 2005, Preamble and Article 35	Maldives 2008, Article 22
Cuba 1976 (rev. 2002), Article 27	Morocco 2011, Article 35
Czech Republic 1993 (rev. 2013), Charter Of Fundamental Rights And Basic Freedoms	Moldova (Republic of) 1994 (rev. 2006), Preamble
East Timor 2002, Article 61(1)	Mozambique 2004 (rev. 2007), Article 117(2.d)
Ecuador 2008 (rev. 2015), Article 317, Article 395(1) and Article 400	Namibia 1990 (rev. 2010), Article 95(1)
Egypt 2014, Article 32, Article 46, Article 78 and Article 79	Niger 2010, Article 35 and Article 149
Eritrea 1997, Article 8(3)	Norway 1814 (rev. 2015), Article 112
Fiji 2013, Article 40(1)	Papua New Guinea 1975 (rev. 2014), Article 4(1)
France 1958 (rev. 2008), Preamble	Poland 1997 (rev. 2009), Article 74(1)
Gambia 1996 (rev. 2004), Article 215 (4.d)	Portugal 1976 (rev. 2005), Article 66(2.d)
Georgia 1995 (rev. 2013), Article 37(4)	Quatar 2003, Article 33
Germany 1949 (rev. 2014), Article 20(a)	Russian Federation 1993 (rev. 2014), Preamble
Ghana 1992 (rev. 1996), Article 36(9)	Seychelles 1993 (rev. 2011), Preamble

South Africa 1996 (rev. 2012), Article 24(b)

South Sudan 2011 (rev. 2013), Preamble, Article 41(2)

Swaziland 2005, Article 210(2) and Article 216(1)

Sweden 1974 (rev. 2012), Article 2

Switzerland 1999 (rev. 2014), Article 2(4)

Tajikistan 1994 (rev. 2003), Preamble

Timor-Leste 2002, Article 61(1)

Tunisia 2014, Preamble

Uganda 1995 (rev. 2005), IIVII The Environment (i, ii)

Uzbekistan 1992 (rev. 2011), Preamble

Uruguay 1966 (reinst. 1985, rev. 2004), Article 47(1.b)

Vanuatu 1980 (rev. 1983), Article 7(d)

Venezuela (Bolivarian Republic of) 1999 (rev. 2009), Preamble, Article 127

Zambia 1991 (rev. 2009), Preamble and Article 112

Zimbabwe 2013, Article 73(1.b), Article 289(e) and Article 298(c)

- ANNEX 2 -

**LIST OF INTERNATIONAL ENVIRONMENTAL AGREEMENTS WITH EXPLICIT
REFERENCES TO INTERGENERATIONAL EQUITY
(IN CHRONOLOGICAL ORDER)**

Charter of the United Nations and Statute of the International Court of Justice, 1 UNTS XVI, 26 June 1945, (Preamble)

International Convention for the Regulation of Whaling, 161 U.N.T.S 72, 2 December 1946, (Preamble)

African Convention on the Conservation of Nature and Natural Resources, 1001 UNTS 3, 15 September 1968, (Preamble)

UNESCO World Heritage Convention, 16 November 1037 UNTS 151, 23 November 1972, (Article 4, obligation)

Declaration of the United Nations Conference on the Human Environment, 16 June 1972, 11 ILM 1416 (Clause 6, Principles 1, 2)

Convention on International Trade in Endangered Species of Wild Fauna and Flora, 3 March 1973, 993 UNTS. 243 (Preamble)

Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques, A/RES/31/72, 14 December 1976, (Preamble)

Convention on the Protection of Nature in the South Pacific, 26 ILM 38, 12 July 1976, (Preamble)

Bonn Convention on the Conservation of Migratory Species of Wild Animals, 1651 UNTS 333, 23 June 1979, (Preamble)

Berne Convention on the Conservation of European Wildlife and Natural Habitats, 19 September 1979, ETS No.104, (Preamble)

Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, 9 EPL 56, 14 February 1982, (Preamble, Article 1)

Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, 20 ILM 746, 23 March 1984, (Preamble)

Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region 21 June 1985, (Preamble)

ASEAN Agreement on the Conservation of Nature and Natural Resources, 9 July 1985, (Preamble)

Convention for the Protection of Natural Resources and Environment of the South Pacific Region, 26 ILM 38, 24 November 1986, (Preamble)

UN Framework Convention on Climate Change, 1771 UNTS 107, 16 June 1992, (Article 3.1)

UN Convention on Biological Diversity, 22 May 1992, 1760 UNTS 79, (Preamble)

UNECE Convention on the Protection and Use of Transboundary, Watercourses and International Lakes, 1936 UNTS 269, 17 March 1992, (Article 2.5.c)

Paris Convention for the Protection of the Marine Environment of the North-East Atlantic, 2354 UNTS 67, 22 September 1992, (Preamble)

Convention on the Transboundary Effects of Industrial Accidents, 2105 UNTS 457, 17 March 1992, (Preamble)

Rio Declaration on Environment and Development, 31 ILM 874, 13 June 1992, (Principle 3)

Non-legally binding forest principles (sic), 1992, (Principle 2.b)

Vienna Declaration and Programme of Action, World Conference on Conference on Human Rights, A/CONF.157/23, 25 June 1993, (Paragraph 1)

North American Agreement on Environmental Cooperation, 17 December 1993, (Preamble)

Convention to Combat Desertification, 1954 UNTS 3, 23 December 1994, (Preamble)

Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region 2161 UNTC, 1995, (Preamble)

Revised Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1102 UNTS 27, 10 June 1995, (Preamble and Article 4.2)

Agreement on the Conservation of African-Eurasian Migratory Waterbirds, 16 June 1995, (Preamble)

Agreement on the conservation of cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area 1996, (Preamble)

1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 36 ILM 1, 7 November 1996, (Preamble)

United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses, 36 ILM 700, 21 May 1997, (Preamble)

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 53 UNTS 357, 5 September 1997, (Article 1 and Article 4)

UNESCO Declaration on the Responsibilities of the Present Generation Towards Future Generations, 12 November 1997

UNECE Aarhus Convention on Access to Information, Public participation in Decision-making and Access to Justice in Environmental Matters, 2161 UNTS 447, 28 June 1998, (Preamble, and Article 1)

Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, UN Doc. MP.WAT/AC.1/1999/1, 17 June 1999 (Article 5.d)

Agreement on the Conservation of Albatrosses and Petrels, 2258 UNTS 257, 21 June 2001, (Preamble)

Stockholm Convention on Persistent Organic Pollutants, 2256 U.N.T.S. 119, 22 May 2001, (Preamble)

International Treaty on Plant Genetic Resources for food and agriculture 3 November 2001, (Preamble)

Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific, 2002, (Article 1 and Article 3)

Protocol on Strategic Environmental Assessment to Espoo Convention, ECE/MP.EIA/2003/2, 21 May 2003, (Preamble)

Black Sea Biodiversity and Landscape Conservation Protocol 14 June 2002, (Article 1.2)

Charter of Fundamental Rights of the European Union, 2012/C 326/02, 2 October 2000 (Preamble)

Protocol to the Aarhus Convention on Pollutant Release and Transfer Registers, 8 October 2009, (Preamble)

Minamata Convention on Mercury, 10 October 2013, (Preamble)

Paris Agreement on Climate Change, 12 December 2015, (Preamble)