

**The Scope and Nature of Children's Right to life
in relation to Climate Change**

Joint Submission of Justice for Girls International & Just Planet
for consideration by the Human Rights Committee
during the half-day general discussion in preparation for
General Comment No. 36 - Article 6: Right to life
of the International Covenant on Civil and Political Rights,
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Justice for Girls International is a Canadian non-government organization founded in 2008 to promote the international human rights of girls around the globe. It is a sister organization to Justice for Girls. Justice for Girls International aims to create international alliances and networks of civil society groups who will jointly advocate for the human rights of girls in local communities and internationally. For more information, see www.justiceforgirls.org.

Just Planet, founded in 2015, is a UK based international human rights organization. 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.

ICCPR, Article 6 (1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

INTRODUCTION

1. The purpose of a general comment on the right to life is “to provide appropriate and authoritative guidance to States Parties and other actors on the measures to be adopted to ensure full compliance with the rights protected under this provision.”¹
2. This submission aims to clarify and prioritize children’s right to life under the International Covenant on Civil and Political Rights (ICCPR) as it relates to the threat of global climate change, one of the greatest threats confronting humanity today.²
3. Children’s right to special protections under the Covenant is enumerated in Article 24 and General Comment No. 17.³ The Human Rights Committee (HRC) notes that duties under Article 24 are most often underestimated by States; it is therefore, critically important to provide interpretive guidance to States Parties on children’s right to life in order to ensure full compliance under the Covenant.⁴
General comment No. 36 must authoritatively guide States Parties on the scope and nature of their duty to protect children’s right to life against climate change.
4. With an emphasis on the need to expansively and holistically interpret Article 6, we urge the HRC to provide an interpretive framework for children’s right to life that is consistent with the scope and meaning of children’s right to life, survival and development authoritatively elucidated by the Committee on the Rights of the Child.⁵
5. This submission also considers the applicability of the right to life to future generations, arguing that protection of children’s right to life must project forward temporally in order to protect future generations from the present day acts and omissions of States Parties that contribute to climate change and whose impacts may take decades to materialize due to a lag between greenhouse gas emissions and climate effects.
6. A model of the right to life that encompasses intergenerational and environmental dimensions calls upon the HRC to enter new territory and requires a creative and

¹ Human Rights Committee, Procedures for the Adoption of a General Comment
<<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx>>

² Secretary-General’s remarks at the Climate Leaders Summit, Washington, DC, 11 April 2014,

³ HRC, ‘General Comment No. 17’ (Thirty-fifth session, 1989) Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 23 (1994).

⁴ *ibid.*

⁵ CRC, ‘General Comment no. 5’ (27 November 2003) UN Doc CRC/GC/2003/5.

unflinching commitment to children's right to survival in the face of climate change.

7. In the following pages we lay out climate change as a grave and certain threat to the survival of children and future generations. We provide a legal framework to establish environmental and intergenerational dimensions of the right to life under Art 6(1). The normative substance of the right draws on the work of the UN Special Rapporteur on Human Rights and the Environment (formerly the Independent Expert), notions of intergenerational justice, and indigenous rights frameworks.

CLIMATE CHANGE

A threat to children's right to life

8. There is consensus amongst world scientists that climate change is a serious and imminent threat to humanity. The Intergovernmental Panel on Climate Change (IPCC) recently concluded with great certainty that: (1) an increase in greenhouse gases (GHG) 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 degree Celsius (2C) above pre-industrial levels is beyond the threshold for human safety.⁶ Climate scenarios in the most recent forecast (IPCCAR5) are best described as going from bad to worse.⁷
9. Beyond the 2C threshold, disruption to climate equilibrium reaches a tipping point in which sudden, unpredictable, and potentially irreversible changes to climate occur due to 'out of control amplifying feedbacks' of ice melt and methane gas release.⁸ The result is ecosystem collapse and a climate state that threatens human survival.⁹ Furthermore, 'climate lag'-- inertia in climate systems that cause a delay between GHG emissions and climate impacts—means that the impact of current GHG emissions may be felt decades or even centuries into the future.¹⁰ On our current course, some scientists predict a 4C rise by the end of this century.¹¹
10. Even below the 2C threshold, we face a suite of devastating consequences, each with a cascade of human rights impacts: shrinking water sources, collapse of food stocks, reduction of biodiversity and species extinction, desertification, extreme temperatures, flooding, droughts, wild fires, 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 wide-spread ocean

⁶ Intergovernmental Panel on Climate Change (IPCC) *Climate Change 2013: The Physical Science Basis* (Cambridge UP 2014).

⁷ *ibid.*

⁸ J Hansen and others, 'Climate Sensitivity, Sea Level and Atmospheric Carbon Dioxide' (2013) 371 *Phil Trans R Soc A* 24.

⁹ *ibid.*

¹⁰ IPCC, *Climate Change 2001: Synthesis Report*. <<http://www.ipcc.ch/ipccreports/tar/vol4/011.htm>>

¹¹ O Milman, 'Climate Change Models Underestimate Likely Temperature Rise, Report Shows' *The Guardian* (13 December 2013).

death.¹² Though there is great variability in how it will impact local communities, depending on factors such as social and economic status and geographical location, none will escape climate change.¹³

11. Climate change is fundamentally a human rights issue; its causes and consequences are rooted in a system of global capital that pursues the natural riches of the planet, leaving a trail of poverty, social inequality, and environmental destruction in its wake. Those who suffer the harshest consequences of climate change—the global poor, women and girls, indigenous peoples, peoples of the Global South, and children—have contributed the least to its cause.¹⁴ It is also an urgent children’s rights matter as children are disproportionately harmed, principally because they will live long enough to endure the worst impacts, but also due to their physical, developmental, and social vulnerability. The impact and threat to children is, moreover, intersectionally compounded by gender inequality, histories of colonization, poverty, racial discrimination, geographic vulnerability, and other inequalities.¹⁵
12. The UN Human Rights Council in 2011 recognized that “human rights and the environment are explicitly and implicitly interrelated.”¹⁶ More recently, special procedures mandate holders issued a joint statement inextricably linking human rights to climate change and calling for an integration of obligations under human rights frameworks to be integrated into global climate change negotiations.¹⁷
13. IPCCAR5¹⁸ has solidified the foreseeability of irreparable harms caused by States’ failures to reduce GHG emissions. The message is clear: we must stop burning fossil fuels or we will unleash runaway climate change. It is a grim picture, but one that highlights States’ obligations to protect against the exploits of extractive industries. And while humanity started the journey of fossil fuel consumption in ignorance of its potential long-term environmental and human costs, global leaders no longer may claim such naivety.
14. In light of IPCCAR5, 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 as set out under international environmental obligations,¹⁹ *inter alia*, by reducing fossil fuel development,

¹² Global Humanitarian Forum, ‘Climate Change--The Anatomy of A Silent Crisis’ (GHF 2009) <<http://www.ghf-ge.org/human-impact-report.pdf>>

¹³ IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability* <<https://www.ipcc.ch/report/ar5/wg2/>>

¹⁴ M Robinson, ‘Climate Change and Justice’ (IIED Barbara Ward Lecture, London, December 2006) <pubs.iied.org/G00101.html?b=d>.

¹⁵ UNICEF, ‘2013 Report Climate Change: Children’s Challenge’ <www.unicef.org.uk/Latest/Publications/climate-change-report-jon-snow-2013/>.

¹⁶ UNHRC Res 19/34 (16 December 2011) UN Doc A/HRC/19/34.

¹⁷ Statement of the United Nations Special Procedures Mandate Holders on the occasion of the Human Rights Day Geneva, 10 December 2014.

¹⁸ IPCCAR5 refers to the combined working group reports of the IPCC 5th Assessment Report.

¹⁹ Pursuant to the terms of the UNFCCC, the Kyoto Protocol sets forth binding obligations to specific targets to limit GHG emissions.

production and consumption. On this basis, States' international cooperation to mitigate climate change is a concrete indicator of compliance with a range of human rights obligations; most fundamentally children's right to life.

Extractive industries: The driving force behind climate change

15. In 2014 UN Secretary General Ban Ki-moon warned world leaders against 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."²⁰
16. 90 companies, the vast majority of which are extractive industries, hold responsibility for two-thirds of global GHG emissions.²¹ Despite numerous international agreements to curb GHGs, transnational oil companies carry on unabated. The regulatory vacuum allowing this to continue exists in the context of an unprecedented concentration of global wealth; global trade policies support the advancement of corporate interests at the expense of the global majority.²²
17. As conventional oil and gas sources are depleted, oil and gas companies turn to far more environmentally destructive and carbon intensive fossil fuels, such as tar sands and shale gas.²³ We have entered a new chapter of 'extreme energy' in which oil and gas industries employ enormously toxic, destructive, and GHG and water intensive extraction methods, such as deep water and Arctic drilling, hydraulic fracturing ('fracking'),²⁴ surface mining, and in situ extraction,²⁵ to brutally force fossil fuels from their resting place far beneath the surface of the earth. Climate scientists warn that exploitation of Canadian tar sands alone would double the amount of carbon dioxide emitted in the entire history of global oil consumption, and for certain lead to runaway climate change.²⁶
18. Visible from space, the Canadian tar sands occupy a landmass larger than Greece—approximately 140,000 square kms. Images of the tar sands reveal a tarry moonscape, punctuated by gargantuan industrial machines and dark lakes of toxic, oily sludge that is the byproduct of tar sands production ('tailings ponds').²⁷

²⁰ UN Secretary-General Ban Ki-moon's remarks at the Climate Leaders Summit, in Washington, D.C April 11 2014, < <http://www.un.org/sg/statements/index.asp?nid=7592>>

²¹ S Goldenberg, 'Just 90 Companies Caused Two-Thirds of Man-made Global Warming Emissions' *The Guardian* (20 November 2013).

²² T Pogge, *World Poverty and Human Rights*. (Polity 2008).

²³ A Nikiforuk, *Tar sands: Dirty Oil and the Future of a Continent* (Greystone 2010).

²⁴ A process in which water is mixed with sand and chemicals, and then injected at high pressure into the earth in order to extract oil and gas.

²⁵ 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 a byproduct of highly toxic sludge.

²⁶ J Hansen, 'Game Over for the Climate' *New York Times* (12 May 2012).

²⁷ In the strip mining method, hot water is used to help separate bitumen from clay, sand, and other materials. This results in a large stream of contaminated liquid waste that is put into holding areas called

The vast boreal forest wilderness and wetlands that are devastated and polluted by the tar sands exacerbate the carbon intensity of the industry because these boreal forests and wetlands form part of the world's largest carbon sinks.

19. Oil companies have also moved to intensive extraction of unconventional oil and gas by hydraulic fracturing of shale rock formations.²⁸ Fracturing requires millions of gallons of water to be pumped into a single well along with toxic chemicals and sand to release natural gas from low permeability shale rock,²⁹ predominantly fresh water is used.³⁰ Chemicals used in the natural gas extraction process could harm many bodily systems including the respiratory, nervous, and endocrine systems, and some are potential carcinogens.³¹ Groundwater and surface water may be put at risk due to chemicals used in hydraulic fracturing and other gas extraction processes.³² Children can be particularly susceptible to the health risks of natural gas development and possible impacts include birth defects and low birth weights in areas close to drilling.³³ Much is unknown about the health impacts of shale gas extraction.³⁴ Public health experts recommend precautionary approaches in relation to shale gas development.³⁵
20. Methane, “a potent greenhouse gas” is the main constituent of natural gas,³⁶ and according to the IPCC has a global warming potential 84-86 times that of carbon dioxide during a 20-year period and about 28-34 times over 100 years.³⁷ If

“tailings ponds,” although they are more like lakes in size.

Oil sands tailings ponds already have a surface area of 130 square kilometers, with a volume of 720 billion litres. The volume is expected to exceed a trillion litres by 2020.

²⁸ Alberta Energy Regulator. "What is Unconventional Oil and Gas?" AER. <https://www.aer.ca/about-aer/spotlight-on/unconventional-regulatory-framework/what-is-unconventional-oil-and-gas>; J Hays, et al. "Considerations for the Development of Shale Gas in the United Kingdom." (2015) 512 *Science of the Total Environment* 36-42.

²⁹ Council of Canadian Academies, Expert Panel on Harnessing Science and Technology to Understand the Environmental Impacts of Shale Gas Extraction. *Environmental Impacts of Shale Gas Extraction in Canada*. Ottawa, ON: Council of Canadian Academies, 2014; Finkel, et al., "The Shale Gas Boom and the Need for Rational Policy." (2013) 103 *American J of Public Health* 1161-1163; Frac Focus Chemical Disclosure Registry. "Hydraulic Fracturing Water Usage." FracFocus. <https://fracfocus.org/water-protection/hydraulic-fracturing-usage>.

³⁰ Council of Canadian Academies, 2014.

³¹ T Colborn, et al., "Natural Gas Operations from a Public Health Perspective." (2011) 17 *Human and Ecological Risk Assessment: An Int Journal* 1039-1056.

³² Council of Canadian Academies, 2014; J Hays, et al, (2015); C Kassotis, et al. "Estrogen and Androgen Receptor Activities of Hydraulic Fracturing Chemicals and Surface and Ground Water in a Drilling-Dense Region." (2013) 155 *Endocrinology* 897-907.

³³ L McKenzie, et al. "Birth Outcomes and Maternal Residential Proximity to Natural Gas Development in Rural Colorado." (2014) 122 *Environmental Health Perspectives* 412-417; E Hill, "Unconventional Natural Gas Development and Infant Health: Evidence from Pennsylvania." (2012) *Cornell University: Charles H. Dyson School of Applied Economics and Management Working Paper* 12.

³⁴ Council of Canadian Academies, 2014.

³⁵ Office of the Chief Medical Officer of Health, New Brunswick Department of Health. *Chief Medical Officer of Health's Recommendations Concerning Shale Gas Development in New Brunswick*. Fredericton, NB: New Brunswick Department of Health 2012; R McDermott-Levy, N Kaktins, and B Sattler, "Fracking, the Environment, and Health." (2013) 113 *AJN The American Journal of Nursing* 45-51.

³⁶ Hays et al, 2015, 38.

³⁷ IPCC 2013, 714.

methane fugitive emissions of shale gas production are as large as estimated by some, the greenhouse gas footprint of shale gas (development and use combined) is larger than conventional gas and even coal over a 20-year horizon.³⁸

21. The International Energy Agency (IEA) warns that the majority of fossil fuels must remain in the ground, estimating in 2011³⁹ that we had five years to change course. The IEA chief economist issued an urgent warning in 2013, ‘Globally, the direction we are on is not the right one. If it continues, the increase would be as high as 5.3 degrees and that would have devastating effects on all of us.’⁴⁰
22. Nonetheless, oil companies are increasing investments to exploit oil reserves.⁴¹ ExxonMobil alone plans to spend \$37 billion a year on capital and exploration investments.⁴² Overall, tar sands investment in Canada rose to a record \$32.7 billion in 2013.⁴³ Despite IEA warnings, States continue approve land use contracts for fossil fuel development and subsidize oil and gas interests over investment in renewable energy; global fossil-fuel subsidies outstrip financial support to renewable sources of energy by a ratio of 5:1.⁴⁴ 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.⁴⁵
23. It is in this context that we call on the HRC to enunciate States’ obligations under the Covenant to act urgently to reduce GHG emissions as a measure to protect children’s inherent right to life.

LEGAL FRAMEWORK

Interpretive Principles

Covenant is a Living Instrument: Evolutive interpretation

24. The rules for treaty interpretation, found within the Vienna Convention on the Law of Treaties (VCLT), principally under Article 31, state that treaties, ‘shall be interpreted in good faith in accordance with the ordinary meaning to be given to

³⁸ 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.

³⁹ International Energy Agency (IEA), ‘World Energy Outlook 2011’ < www.worldenergyoutlook.org/> (IEA 2011)

⁴⁰ IEA, ‘World Energy Outlook Special Report: Redrawing the Energy-Climate Map’ 10 June 2013 <www.worldenergyoutlook.org/> (IEA 2013).

⁴¹ Carbon Tracker, ‘Unburnable Carbon’ (March 2012) <www.carbontracker.org/> accessed 11 April 2014.

⁴² B Reddall, ‘Exxon Expects Annual Investment of \$37 billion a Year’ *Reuters* (24 Feb 2012) < <http://uk.reuters.com/article/2012/02/24/uk-exxon-idUKTRE81N24T20120224> >.

⁴³ Government of Alberta, <www.albertacanada.com/> Accessed 11 April 2014.

⁴⁴ IEA 2013.

⁴⁵ 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>.

the terms of the treaty in their context and in the light of its object and purpose.⁴⁶ The context of interpretation must take into account the entire treaty, along with agreements, instruments and practices made in connection with interpretation of the treaty.⁴⁷ The rules for treaty interpretation are, ‘quite a loose structure for developing interpretations, rather than a straightjacket or formulaic set of requirements.’⁴⁸ Thus, the law is in a dynamic and complex arena in which the changing world pushes and pulls it toward greater relevance and more universal conceptions of humanity. The law must be positioned as a living instrument responsive to its broader environment.⁴⁹

25. The HRC must face the interpretive challenge of finding environmental and intergenerational dimensions within the right to life while guarding against overstretching the right and thus jeopardizing the integrity of human rights standards, while simultaneously breaking free from a narrow frame of interpretation that renders human rights irrelevant to the dangers presented by the changing global climate; ‘dynamism must be an essential characteristic of any enduring concept of human rights.’⁵⁰ And while we face challenges of ‘imperfect duties’ between rights-holders and duty-bearers—between past and present, human and environment—a reductionist reading of the law that fixates on the narrow philosophical coherence of rights does not assist the human rights project.⁵¹ In the inspiring words of Weeramantry, former vice president of the International Court of Justice and advocate for future generations, if we ‘have a vision of law in all its glory, the law is a most wonderful discipline and can work wonders for humanity.’⁵² We urge the HRC to follow this ethos by thinking expansively about the temporal and ecological dimensions of children’s right to life.

Precautionary Principle

26. 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.⁵³ In light of recent scientific evidence, it is reasonably foreseeable that States failure to reduce greenhouse gas emissions will lead to catastrophic harm to children and future generations. The

⁴⁶ (23 May 1969) 1155 UNTS 331, art 31(VCLT).

⁴⁷ VCLT, art 31.

⁴⁸ R Gardiner, ‘The Vienna Convention Rules on Treaty Interpretation’ in DB Hollis, ed. *The Oxford Guide to Treaties* (OUP 2012) 492.

⁴⁹ R Hiskes, ‘The Right to a Green Future: Human Rights, Environmentalism, and Intergenerational Justice’ (2005) 27 HRQ 1346; Gardiner (n 36).

⁵⁰ P Alston, ‘A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?’ (1982) 29 *Netherlands Intl L Rev* 307, 321.

⁵¹ 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) 25.

⁵² CG Weeramantry, ‘Building a Common Future for Generations to Come’ (Justice Charles Gonthier Memorial Conference Montreal, May 2011).

http://www.wicper.org/resources/view/building_a_common_future_for_generations_to_come.

⁵³ Principle 15, Rio Declaration, UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992).

interpretation of children's right to life must engage a precautionary approach to the protection of this supreme right.

Normative Landscape supporting environmental and intergenerational dimensions of the right to life

Human Rights and Environmental Protections

27. A number of special procedures mandate holders have articulated the impacts of climate change within the frame of economic, social and cultural rights and established environmental protections within rights to food, water, and adequate housing.⁵⁴ Signaling 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.⁵⁵
28. In his first report, Knox outlined the obligations that human rights law imposes regarding environmental protection and highlighted the need for greater study.⁵⁶ His top priority was to conceptually clarify the link between human rights and environment. Pointing to a plethora of Human Rights Council resolutions, the work of numerous special rapporteurs and independent experts, regional instruments, and substantial jurisprudence, Knox made a powerful case for the existence of environmental protections within human rights, concluding that human rights, including the right to life, are indeed dependent on “an environment that allows them to flourish.”⁵⁷

Intergenerational Justice

29. The idea of intergenerational justice is gaining traction within international human rights law discourse in relation to climate change.⁵⁸ Edith Brown-Weiss pioneered the legal notion of intergenerational equity, the idea that we have obligations to protect the environment for the sake of future generations.⁵⁹ 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 the right to life, it is useful to

⁵⁴ 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>; A/HRC/9/23; A/HRC/19/34.

⁵⁵ A/HRC/RES/19/10.

⁵⁶ A/HRC/22/43.

⁵⁷ Ibid, para 10.

⁵⁸ See for instance: www.futurejustice.org or Oxford Martin Human Rights of Future Generations Programme.

⁵⁹ E Brown-Weiss, *In fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (UNU 1989).

briefly explore where international environmental law has led the way in establishing these norms.

30. 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.’⁶⁰ Significantly, this principle, with its emphasis on equality and dignity, is articulated in the language of human rights.⁶¹ Decades later, the UN Framework Convention on Climate Change (UNFCCC)--the core international agreement on climate change--articulated similar obligations to future generations, ‘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.’⁶² Moreover, it 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.⁶³
31. 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.⁶⁴ Skeptics 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.⁶⁵
32. A number of legal theorists and experts have responded to this concern. Pointing to examples within traditional legal paradigms, Bell responds to skeptics by asserting that climate related duties neither depend on the identity of the duty bearer, nor the temporal distance between actions and harms.⁶⁶ He argues that a right is philosophically defensible to the extent that it concerns human interests. Similarly, Weston’s conception of intergenerational ecological justice foregrounds the urgency of the threat of climate change as justification for bracketing philosophical challenges, reminding us that the central purpose of human rights, after all, is to protect the interests of humanity.⁶⁷

⁶⁰ Principle 1.

⁶¹ R Hiskes, ‘Environmental Human Rights’ in T Cushman, ed. *Handbook of Human Rights* (Routledge 2011).

⁶² 1771 UNTS 107 (1992), art 3(1).

⁶³ Art 3(3).

⁶⁴ Milenium Development Goal # 7

http://www.undp.org/content/undp/en/home/mdgoverview/mdg_goals/mdg7.

⁶⁵ See for instance B Weston, ‘The Theoretical Foundations of Intergenerational Ecological Justice: An Overview’ (2012) 34 HRQ 251.

⁶⁶ D Bell, ‘Does Anthropogenic Climate Change Violate Human Rights?’ (2011) 14 Critical Rev of Intl Social and Political Philosophy 99.

⁶⁷ Weston (n 65).

33. Faced with the “paradox of current duties grounded in future rights”,⁶⁸ Merrills contends that intergenerational protections are implicit within foundational human rights standards.⁶⁹ Protecting the rights of future generations thus, might best be viewed as foregrounding 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. Hiskes weaves in another dimension, the collective nature of rights, asserting they, ‘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.’⁷⁰
34. The Philippines Supreme Court laid 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.⁷¹ Advancing a justiciable right of children to claim environmental protections for themselves and future generations, the court readily accepted 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.*⁷²

35. The logic of *Minors Oposa* is extremely useful to the advancement of intergenerational (and environmental) dimensions of children’s right to life in relation to climate change.⁷³ We urge the HRC to adopt this logic in guiding States on their obligations under the Covenant.

⁶⁸ Bell (n 66) 107.

⁶⁹ 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).

⁷⁰ R Hiskes, ‘The Right to a Green Future: Human Rights, Environmentalism, and Intergenerational Justice’ (2005) 27 HRQ 1346, 1354-55.

⁷¹ 33 ILM 173 (1994).

⁷² *ibid.*

⁷³ 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.

Indigenous Rights

36. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), an instrument centered 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.⁷⁴ It is a “stewardship model of intergenerational reciprocity”,⁷⁵ that engages a holistic, collective view of humanity and inseparably 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. Imperialist globalization exploits all that sustains life and damages the Earth.*⁷⁶

37. 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.⁷⁷

38. Separately and combined, the international norms of environmental protection, intergenerational ecological justice, and indigenous rights frameworks provide a body of ‘soft law’ by which to solidify environmental and intergenerational elements of children’s right to life under the Covenant.

Substance of the Right in the Context of Climate State Obligations

39. 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.⁷⁸ The Oslo principles, centered in well-established principles and law,

⁷⁴ (2 October 2007) UN Doc A/RES/61/295, preamble and art 29.

⁷⁵ Weston (n 65) 260.

⁷⁶ 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).

⁷⁷ 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.

⁷⁸ Oslo Principles on Global Obligations to Reduce Climate Change<
<http://www.yale.edu/macmillan/globaljustice/Oslo%20Principles.pdf>>.

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 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.⁷⁹

Obligations under ICCPR

40. Every year, climate change leaves over 300,000 people dead, with projections for an exponential increase this century.⁸⁰ As explained earlier, ‘climate lag’ suggests that worse is yet to come if States do not take immediate and aggressive action to reduce GHGs.⁸¹
41. In light of this, states have an obligation under Article 6(1) of the Covenant to protect children and future generations from harm and possible extinction from climate change. States who refuse to comply with GHG emissions targets or continue to develop fossil fuel extraction, especially extreme extraction such as tar sands or hydraulic fracturing, are in breach of their obligation to protect children’s right to life.
42. Children’s right to life is a supreme right from which no derogation is permitted. Article 2 imposes positive obligations upon States to protect children’s right to life, through legislative, judicial, administrative, educative and other measures, from interference by private actors. Further, this right contains States’ obligations to act with due diligence to prevent, punish, investigate or redress harms caused by private actors or entities.⁸² The duty to regulate goes beyond drafting policy; there must be substance to protections.⁸³
43. Special protections for children are articulated under ICCPR Article 24 and General Comment No. 17.⁸⁴ Most often underestimated by States,⁸⁵ these

⁷⁹ Oslo Principles, 1.

⁸⁰ GHF 2009 (n 12).

⁸¹ IPCCAR5

⁸² HRC, ‘General Comment No. 31’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13.

⁸³ UNHCHR, ‘State Responsibilities to Regulate and Adjudicate Corporate Activities under the UN Core Human Rights Treaties’ Report Number IIII June 2007 <<http://www.reports-and-materials.org/Ruggie-ICCPR-Jun-2007.pdf>>.

⁸⁴ HRC, ‘General Comment No. 17’ (Thirty-fifth session, 1989) Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 23 (1994).

⁸⁵ Ibid.

obligations are principally posited as a negative duty in relation to the death penalty; however, children's right to life imposes positive obligations upon States to address systemic threats to the right to life, including infant mortality, malnutrition, and epidemics.⁸⁶ The HRC is firm in General Comment No. 6 that the right to life must not be interpreted narrowly stating that, 'the expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.'⁸⁷

44. The HRC's broad interpretation of the right to life and emphasis on special protections for children, places climate change within the scope of children's right to life. Climate change already causes deaths and is projected to increase the death toll exponentially in coming decades. In some cases, extinction of entire peoples may result.⁸⁸ If States fail to act with due diligence to protect children at home and abroad from the impending ravages of climate change, they are in breach of obligations to protect children's right to life; 'States' fundamental obligations to refrain from arbitrary deprivation of life and to undertake due diligence to protect against the deprivation of life by non-State actors do not become inapplicable merely because the deprivation involves the environment.'⁸⁹
45. Children today face the threat of death by climate related disasters connected to extreme weather, food and water scarcity, insecurity, war over resource shortages and other such grim prospects. Indigenous children, children in poverty, girls, and children in the Arctic and Global South will pay the highest toll, as existing social and economic inequalities are exacerbated by climate induced disasters.
46. The HRC opened the door to environmental claims to the right to life in *E.H.P. v. Canada*, finding serious issues with the State's duty to protect the right to life from the effects of environmental degradation (nuclear waste), but dismissed the case for failure to exhaust domestic remedies.⁹⁰ Subsequent claims have failed as a result of weak evidentiary links between environmental degradation and threats to life. In a number of cases, claimants overstretched the right to life on contested environmental claims (impacts of road construction, impacts of GMOs).⁹¹ In another case, authors claimed their right to life was threatened by a one-year

⁸⁶ HRC 'General Comment No. 6' (Sixteenth session, 1982) Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies U.N. Doc. HRI/GEN/1/Rev.6 at 127 (2003).

⁸⁷ Ibid, para 5.

⁸⁸ J Williams, 'The Impact of Climate Change on Indigenous People – the Implications for the Cultural, Spiritual, Economic and Legal Rights of Indigenous People' 2012 16 Intl J HR 648.

⁸⁹ UNHRC, 'Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights' (15 January 2009) UN Doc A/HRC/10/61 (UNHRC Climate Change Report), para 61.

⁹⁰ *E. H. P. v. Canada* (1984) Communication No. 67/1980, U.N. Doc. CCPR/C/OP/1 at 20.

⁹¹ *Dahanayake and 41 other Sri Lankan citizens v. Sri Lanka* (2006) Communication No. 1331/2004, U.N. Doc. CCPR/C/87/D/1331/2004; *Brun v. France* (2006) Communication No. 1453/2006, UN Doc CCPR/C/88/D/1453/2006.

period of underground nuclear testing, and though the HRC found they did not meet the requirements of victim status, it did find that testing of nuclear weapons is a substantial threat to the right to life.⁹² If nuclear weapons testing is a substantial threat to the right, certainly the HRC would find climate change a substantial threat to children's right to life, especially in light of IPCCAR5, which makes unequivocal statements on dangers to health, security, and life.

47. In the context of climate change, implementation of the right to life must be applied in a precautionary way, anticipating future harms based on the acts or omissions of current State practices. There are many precedents within HRC jurisprudence for this kind of interpretation. For instance, interpreting the right in relation to extradition, the HRC articulates States' obligation to respect the covenant rights where there are 'substantial grounds for believing that there is a real risk of irreparable harm.'⁹³ Further, the HRC found a complainant's victim status does not require harm to have taken place, but instead requires the right to be at 'real risk' of violation.⁹⁴ Children's rights to life under ICCPR must be read in conjunction with Article 24, which engages strong international imperatives to act in the best interests of children (individually and collectively).⁹⁵ State parties thus shoulder an additional burden to ensure that children's right to life is fiercely guarded under the covenant, thereby lowering the threshold of the 'real risk' requirement for victim status. Certainly, dire projections of IPCCAR5 amount to real risk of children's right to life under the covenant; children could claim this right if States fail to reduce GHG emissions and/or protect against climate harms of extractive industries. Furthermore, the disproportionate impact on girls, children in poverty, indigenous children, children in the Arctic and sub-Saharan regions, triggers obligations of non-discrimination within the right to life.

Children's right to life, survival and development under CRC

- ^{48.} The Committee on the Rights of the Child has authoritatively enumerated children's right to life and thus provides an interpretive framework for how the right is best conceptualized within a General Comment under ICCPR. State parties 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 as the only right described as inherent.⁹⁶ Article 6 is key to protecting current and future generations from climate change because it imposes positive obligations upon

⁹² *Bordes and Temeharo v. France* (1996) Communication No. 645/1995, U.N. Doc. CCPR/C/57/D/645/1995.

⁹³ HRC, 'General Comment No. 31' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13; *Kindler V. Canada* (470/91) cited in S Joseph and M Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (OUP 2013).

⁹⁴ *Kindler V. Canada*.

⁹⁵ CRC 'General Comment No. 14' (29 May 2013) UN Doc CRC/C/GC/14GC.

⁹⁶ S Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff 1999).

States to ensure children’s right to survival. The Committee on the Rights of the Child calls for a broad and holistic interpretation of the right.⁹⁷

49. 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 fulfill to the maximum extent possible the survival and healthy development of the child.’⁹⁸ 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.⁹⁹ The Committee on the Rights of the Child specifically enumerates environmental degradation from business as a threat to children’s right to survival,¹⁰⁰ supporting a comprehensive interpretation that assumes rights to adequate food, housing, water and a healthy environment.¹⁰¹ The Committee also identifies the potential of 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.’¹⁰² 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.¹⁰³

Meaning of “Protected by Law” under ICCPR Article 6(1)

50. The gravity of climate threats to children’s right to life necessitates urgent action and a precautionary approach. Runaway climate change cannot be remedied and therefore legal protections must focus on prevention. Interim measures are thus critically important to protect children’s right to life against the climate harms caused by extractive industries. Treaty Bodies must engage in “preventive diplomacy”¹⁰⁴ 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 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).

51. CERD’s Early Warning and Urgent Action Procedures is an innovative mechanism designed to anticipate and prevent serious threats to covenant rights,

⁹⁷ CRC, ‘General Comment no. 5’ (27 November 2003) UN Doc CRC/GC/2003/5.

⁹⁸ M Nowak, *Article 6: the Right to Life, Survival and Development* (Brill Academic Pub 2005) 37

⁹⁹ S Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff 1999).

¹⁰⁰ CRC ‘General Comment No. 16’ (17 April 2013) UN Doc CRC/C/GC/16.

¹⁰¹ Nowak (n 86).

¹⁰² CRC ‘General Comment No. 16’ (17 April 2013) UN Doc CRC/C/GC/16.

¹⁰³ Nowak (n 117).

¹⁰⁴ CRC General Comment No. 16’, para 28.

¹⁰⁴ ‘Guideline for the Early Warning and Urgent Action Procedures Annual Report’ UN Doc A/62/18 para 2.

including genocide.¹⁰⁵ Threats are assessed according to the ‘gravity and scale of the situation, including the escalation of violence or irreparable harm.’¹⁰⁶ CERD lists the racialization of environmental pollution, and exploitation and displacement of indigenous peoples via extractive industries as triggers for urgent action.¹⁰⁷ 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 HRC to focus on prevention and interim measures as key legal protections of children’s right to life in relation to climate change within the General Comment.

CONCLUSIONS & RECOMMENDATIONS

52. The greatest threat to children’s right to life facing humanity today is the possibility of catastrophic climate change, which will certainly result in severe violations of children’s rights across the globe, including the possibility of human extinction. All nations must take urgent action to limit GHG emissions.
53. States Parties must understand their obligations to protect children’s right to life against runaway climate change. Protection of this right requires urgent and aggressive reductions in greenhouse gas emissions, principally by immediately halting investments in fossil fuel extraction. Development of unconventional fossil fuel sources such as tar sands or shale gas is a clear violation of children’s and future generation’s right to life under the Covenant. Strict regulation of extractive industries and investment in renewable energy sources is required for States to meet their obligations under the Covenant.
54. The HRC must ‘environmentalize’ States’ obligations in the understanding that future generations will not prevail in the face of ecosystem and climate collapse. Interpretation of the right to life in a way that enshrines intergenerational and environmental elements may be challenging to existing human rights models and practices, but international human rights bodies must act urgently and with precautionary action to stop this threat to the most fundamental rights of children and future generations; the right to life.

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid* para 12.

¹⁰⁷ For example CERD/C/USA /DEC/1 or CERD/C/DEC/NZL/1.