

Master of Law: Advanced Studies of International Children's Rights

## **Existential Oblivion**

**An Analysis of the CRC's Legal Framework in Protecting Children's  
Right to Health and Right to Life in the Face of Climate Change**



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Location: The Netherlands

### **Declaration Statement**

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*“When the seas envelop our coastal cities, fires and droughts haunt our interiors, and storms ravage everything between, those remaining will ask: Why did so many do so little?”<sup>1</sup>*

**US Judge Staton, 2020**

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<sup>1</sup> *Juliana vs. United States* (9th Cir. 2020) “Dissenting Opinion Judge Stanton” 32.

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I would like to dedicate this thesis to all the children worldwide suffering immensely due to our changing climate and those children protesting and advocating for a healthier planet. This thesis acknowledges that you all deserve the right to a long, happy and healthy life free from the adverse consequences of climate change.

**Laura Shorten, 2021**

**AUTHORS NOTE**

*"Nothing is as powerful as an idea whose time has come."<sup>2</sup>*

Almost three years ago, I chose a plant-based lifestyle when I started to truly understand the symbiotic relationship between human health, animal health and environmental health. It will be almost impossible to feed future generations based on the diets and consumption patterns adopted by western Europe and North America today. Many people in the world acknowledge the current climate crisis in an 'existential oblivion'.

During the writing process for this thesis, the world is witnessing a unique moment in history. With a global pandemic forcing the entire world to lockdown, it has been a challenging and eye-opening year for everyone. COVID-19 rampaged across the world as a direct result of our broken relationship with nature. Warnings have arrived in the form of natural disasters, flooding, heatwaves, the collapse of ecosystems and the spread of highly infectious diseases.

Moreover, as we have started to achieve many goals within children's rights that decades ago seemed impossible, we often ignore a persistent and inconvenient truth, which is that of our changing climate. Consequently, I have dedicated the nexus between climate change and children's rights as my thesis research topic. This thesis aims to bring environmental issues to the forefront and start a long-overdue conversation. Are we doing enough to protect our future generations? Without them, our actions and dreams may be rendered meaningless.

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<sup>2</sup> Quoted by French poet and novelist Victor Hugo.

## EXECUTIVE SUMMARY

An inconvenient truth. In Chapter 1, I introduce the nexus between children's rights and climate change. I describe some of the unprecedented events that took place in 2020, reflecting humanity's broken relationship with nature. This chapter informs the reader of the normative framework surrounding climate change and children's rights. I submit that children are particularly vulnerable to climate change and its adverse consequences due to their high dependency on caregivers, greater susceptibility to climate-induced diseases and vulnerability to extreme weather events and disasters. This chapter briefly describes the scientific predictions of climate change and how we are heading towards irreversible tipping points with devastating consequences. Finally, this chapter presents a research question and methodology which seek to determine whether the Convention on the Rights of the Child's (CRC) legal framework is adequate in protecting children's right to health and right to life in the face of climate change.

Mother nature's unequivocal message for the world to stop. In Chapter 2, I examine the protection offered to children under article 24 CRC in the context of climate change. This chapter submits that climate change threatens all essential ingredients of a child's health, such as clean air, safe drinking water, adequate and nutritious food supply and safe shelter. This increases malnutrition, child mortality rates, infectious diseases and results in poor mental health and development.

This chapter examines how the CRC's Concluding Observations (COs) and General Comments (GCs) have played a vital role in implementing and monitoring the CRC. This chapter criticizes the CRC's reporting mechanism, which has suffered from considerable backlog over the years and is often drowning in reports and summaries. The CRC's reporting procedure lacks a robust follow-up procedure which is left up to the will of states or NGOs. I submit that climate change is not prioritized within state reporting, and this is backed by statistical evidence. Climate change has appeared in 43/128 COs representing 35% of all reports issued between 2014 and 2021. Moreover, climate change is only mentioned in 1/25 GCs issued as of July 2021. These findings delegitimize its status as an existential threat and demonstrate insufficient reporting on behalf of the CRC Committee.

This chapter conducts a comparative analysis of state reporting procedures between different human rights treaty bodies and has found that the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights has consistently referenced climate change in more reports than the CRC Committee. This chapter concludes by examining how states violate children's right to health using the example of the business sector and deforestation within the Brazilian Amazon rainforest.

Ecocide, war and mass migration. Chapter 3 examines the adequacy of the CRC's legal framework in protecting children's right to life, survival and development in the context of climate change. This chapter highlights states obligations under article 6 CRC and examines how this right is under a significant threat. This chapter examines the CRC's COs and GCs in light of article 6 using the same methodology as the previous chapter. I submit that the right to life is not often mentioned in the context of climate change or the environment within COs or GCs. The right to life in the context of climate change or the environment appears in 12/123 reports, representing 10% of all COs issued during this period.

I submit that climate change violates children's right to life as it exacerbates violence and wars across many regions beckoning children's exposure to armed conflict, poor development and high child mortality rates. Next, I explore the Genocide-Ecocide nexus of climate change and its threats to indigenous societies' survival and development. The CRC Committee has promoted states to respect



the cultural significance of traditional land and the quality of the natural environment. However, I urge the reader to reflect on how neoliberal globalization and concomitant nation-state building have destroyed the chances of survival of most low lying coastal islands and small indigenous families worldwide.

Climatic disasters usually result in the displacement of millions of child climate refugees who are vulnerable and need protection. It is estimated that there could be up to one billion climate refugees by 2050. I consider how article 22 CRC does not translate into effective state implementation for environmental migrants. I highlight a lacuna within the 1951 Refugee Convention, which does not offer environmental refugees recognition when fleeing their country. I critically analyze the landmark case of *Teitiota v. New Zealand*, which demonstrated the high threshold needed to invoke *non-refoulement* obligations in the context of climate refugees. *Teitiota* demonstrated how climate change forebodes an ecological crisis while also highlighting a humanitarian one. For the first time in history, the Human Rights Committee (HRC) recognized the impact climate change has on the right to health and the right to life. It illustrated how these two provisions could be invoked to protect child climate refugees. This ruling demonstrates how the HRC placed an unreasonable burden of proof in meeting the threshold of a real risk of danger or arbitrary deprivation of life, reflecting inadequacies in the extent to which the HRC offers protection in these circumstances. I submit that although the CRC offers protection to refugees, this case demonstrates how national immigration laws and the 1951 Refugee Convention's strict definition hinder this protection from being implemented. As a result of increasing transnational climate governance, this case is an essential precedent for child climate refugees or externally displaced children in the future. It could be raised as a potential communication before the Optional Protocol to the CRC on a communications procedure (OPIC).

In Chapter 4, I submit that there has been a proliferation of climate litigation which has reached almost every region of the world. I consider how children are increasingly exercising their agency and participatory rights under article 12 CRC in a way the world has never seen before. This is being used to fight climate litigation at the national, regional and international levels. The Paris Climate Agreement (PCA) and the United Nations Framework Convention on Climate Change (UNFCCC) have proven ineffective in mitigating this crisis and have served as essential drivers behind this litigation as people are now turning to legal action as their states are not willing to fulfil their commitments.

I urge the reader to consider how the right to health and the right to life can be used as legal tools in achieving climate action and influencing state behaviour. I will consider how these two rights are being invoked across the globe to advance climate policies and establish effective transnational climate governance. I extensively discuss the landmark pending case of *Sacchi et al.* and submit that OPIC strengthens international climate justice. However, I note that OPIC has its limitations which hinders many children from accessing this mechanism. I refer to *Sacchi* as the 'baptism of fire' as the CRC Committee has a unique opportunity to set a transformative precedent for children's rights and future generations. The Committee also has an opportunity to clarify important issues such as the *locus standi* of the applicants, the extra-territorial obligations and jurisdictional issues arising under the CRC, and the requirements of exhausting all domestic remedies. This chapter concludes by examining other significant litigation from national courts, focusing on the right to health and right to life, which have influential power in initiating change in this area and setting valuable precedents.

Finally, in section 5, I offer some concluding remarks and recommendations for moving forward in this unique time in history.

## OVERVIEW OF MAIN FINDINGS

This thesis finds that the CRC's legal framework is not adequate in protecting children's right to health and right to life in the face of a climate change crisis. In coming to this conclusion, the CRC's COs, GCs and jurisprudence were examined.

Firstly, all 123 COs issued between 2014 and 2021 were analyzed, and some findings can be drawn. The key word "climate" was mentioned in 35% of reports. States and NGOs have the discretion to choose what issues will be raised in these reports, and thus the Committee is restricted to reporting on only the issues raised by the state. As a result, high emitting states with a % global share of CO<sub>2</sub> of 0.11% or higher often choose not to engage in climate discussions. It can be concluded that states with a % global share of CO<sub>2</sub> of 0.09% or lower are far more likely to have climate change mentioned in their reports. These are mainly developing states, some of which are situated on low lying coastal areas that are already suffering from the adverse consequences of this crisis. Although there have been some improvements in recent years, this thesis finds that the CRC Committee is not effectively reporting climate change within their COs.

Following this conclusion, I expanded my research to determine the frequency in which the "environment", the right to "health", and the right to "life" appeared as keywords within COs. The environment appears far more frequently and represents 70% of reports which can be considered an indirect reference to climate change. However, I argue that we should avoid conflation between climate change and the environment as they should be treated as distinct elements. Although the environment appears in a high number of reports, I submit that this is often in vague and generic terms. The CRC Committee fails to contextualize reports and give concrete recommendations to states based on their individual circumstances. This results in similar reports being issued to states with very different issues at stake. This can be a result of time restraints and a considerable backlog within the reporting mechanism. This thesis highlights how the CRC Committee's references to the environment do not excuse its lack of reporting on climate change.

The CRC Committee refers to the right to health more frequently than the right to life in the context of climate change and environmental matters. It was found that the right to health appeared in 43% of COs compared to the right to life which appeared in 10% of all reports. This is surprising considering article 6 is one of the general principles underpinning all other rights under the CRC.

Secondly, 25 GCs issued as of July 2021 were examined to analyze the frequency of the keywords mentioned above. The Committee has not issued a GC on climate change yet but has committed to doing so as of March 2021. It was found that only one GC has mentioned climate change which illustrates a lack of prioritization of the climate crisis. In a more positive vein, the environment was mentioned in 10/25 GCs. However, as stated above, the Committee should not be exempt from its responsibilities to report on climate change because it references the environment more frequently.

Thirdly, the CRC's jurisprudence was examined, focusing on the pending case of *Sacchi*. An analysis was conducted on OPIC to assess its positive and negative characteristics. OPIC is an excellent element of the CRC's legal framework, which helps children seek redress for rights violations and influences legal and policy frameworks. However, this mechanism has a slow ratification uptake which limits a considerable proportion of children's access. OPIC also encompasses burdensome and challenging procedural requirements, which hinders the accessibility of this mechanism. OPIC does not allow for a case to be heard before the Committee meaning children must submit their Communication in writing through their lawyer.

## **KEYWORDS**

CRC Committee – Climate Change – Environment - Existential Oblivion – Right to Health – Right to Life – Article 24 CRC – Article 6 CRC - Convention on the Rights of the Child – Climate Litigation – Children’s Rights – OPIC – Concluding Observations – General Comments – Sixth Mass Extinction

**LIST OF ABBREVIATIONS**

<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>BIC</b>	Best Interests of the Child
<b>CERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CAT</b>	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CMW</b>	Committee on the Protection of Migrant Workers and Members of their Families
<b>CO<sub>2</sub></b>	Carbon Dioxide
<b>CRC</b>	Convention on the Rights of the Child
<b>CRC Committee</b>	Committee on the Rights of the Child
<b>CRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>EU</b>	European Union
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>GC</b>	General Comment
<b>GHG</b>	Green House Gas Emissions
<b>HRC</b>	Human Rights Committee
<b>IACtHR</b>	Inter-American Court of Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IDP</b>	Internally Displaced Persons
<b>IPCC</b>	Intergovernmental Panel on Climate Change
<b>IPT</b>	Immigration and Protection Tribunal
<b>PCA</b>	Paris Climate Agreement
<b>OPIC</b>	Optional Protocol to the Convention on the Rights of the Child on a communications procedure
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>SDG</b>	Sustainable Development Goals

<b>UN</b>	United Nations
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNICEF</b>	United Nations Children's Fund
<b>VCTL</b>	Vienna Convention on the Law of Treaties
<b>WHO</b>	World Health Organization

# Chapter 1

## An Inconvenient Truth: Children's Rights and Climate Change

### 1.1. Introduction

*"We do not inherit the Earth from our Ancestors; we borrow it from our Children".<sup>3</sup>*

**Ancient American Proverb**

Morally, politically and economically, climate change is the defining issue of the 21<sup>st</sup> century. Anthropogenic climate change poses the possibility of total human extinction.<sup>4</sup> At the UN Climate Action Summit 2019, Greta Thunberg quoted:

[y]ou have stolen my dreams and my childhood with your empty words, people are suffering, people are dying, and entire ecosystems are collapsing...we are heading towards a mass extinction.<sup>5</sup>

These death-defying words from a unique sixteen-year-old girl paints a compelling picture of climate change and what is the most outstanding children's human rights threat humanity has ever faced. As illustrated through the title of this thesis, we live in an "existential oblivion" as we move towards the sixth mass extinction in cosmological history. Every child born today will experience a fundamentally altered world, increasing the probability of severe disease, illness, and death.<sup>6</sup> The year 2020 was something we had all subconsciously been waiting for. It was a year so uncomfortable, so painful, so raw – that it finally forced us to awaken from an ignorant slumber and accept the need for change. The year 2020 shook humanity to its core and showed us that the threats to global health from disturbances in our relationship with mother nature are profound and imminent. The world witnessed Australia's rampant and unprecedented bushfires, which burned more than 46 million acres, wildfires spreading across Argentina, Brazil, Paraguay and Bolivia, the COVID-19 pandemic forcing the entire world to lockdown, natural disasters, air pollution, deforestation, ocean acidification, hurricanes, cyclones, water and food shortages, extreme heat, extreme flooding, erosion of coastal areas, the collapse of ecosystems and migration and refugee crises.

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<sup>3</sup> Quoted by Bishop Tutu in 'Quotes From Our Native Past' <http://www.ilhawaii.net/-stony/quotes.html>.

<sup>4</sup> Mark Levene and Daniele Conversi, 'Subsistence Societies, Globalisation, Climate Change and Genocide: Discourses of Vulnerability and Resilience' (2014) 18 The International Journal of Human Rights 281.

<sup>5</sup> Juliette McIntyre, 'With fifteen other children, Greta Thunberg has filed a UN Complaint against five countries.' The Conversation (2019) <https://theconversation.com/with-15-other-children-greta-thunberg-has-filed-a-un-complaint-against-5-countries-heres-what-itll-achieve-124090>.

<sup>6</sup> Helen Clark et al., 'A Future for the World's Children? A WHO–UNICEF–Lancet Commission' (The Lancet Commissions 2020) [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)32540-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)32540-1/fulltext).

## 1.2. Normative Framework

This thesis explores the nexus between climate change, children's right to health and right to life in the context of the legal framework of the Convention on the Rights of the Child (CRC). The CRC was established in 1989, and it is the most widely ratified international human rights treaty comprising 196 state parties. All UN member states have ratified the CRC, except for the United States (US).<sup>7</sup> The Committee on the Rights of the Child ('the Committee' or the 'CRC Committee') is the most important treaty body responsible for implementing and monitoring the Convention and its Optional Protocols.<sup>8</sup> This legal framework has inspired considerable activity within the national and international realms of children's rights. It has been praised in saying that "the nearly universal adoption of the CRC has changed the global discourse on children's policy".<sup>9</sup> Noteworthy is how the CRC was the first universal treaty to recognize the connection between human rights and the state of the environment.<sup>10</sup>

These states are also bound by the United Nations Framework Convention on Climate Change (UNFCCC)<sup>11</sup>, established in 1991 and ratified by 197 states, the Paris Climate Agreement (PCA)<sup>12</sup>, adopted in December 2015, and the Sustainable Development Goals (SDGs) established from 2015-2030. This normative framework makes children's rights an essential aspect for conceptualizing obligations, responsibilities, and responses to climate change.<sup>13</sup> This is implied under article 4 CRC, which obliges states to "undertake all appropriate...measures for the implementation of the rights recognized." Climate change presents a grave threat to the implementation of the CRC and brings to the forefront concrete risks to children's rights.

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<sup>7</sup> Julia Sloth-Nielsen, 'Monitoring and Implementation of Children's Rights', *International Human Rights of Children* (Springer 2018) 34; 'Status of Treaties' (*Treaties.un.org*) [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-11&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4).

<sup>8</sup> Jaap E. Doek, 'The Human Rights of Children: An Introduction', *International Human Rights of Children* (Springer Nature 2019) 20.

<sup>9</sup> Karin Arts, "Twenty-Five Years of the United Nations Convention on the Rights of the Child: Achievements and Challenges" (2014) 61 *Netherlands International Law Review*.

<sup>10</sup> Stefano Sensi, *Human Rights and the Environment - A Practical Guide for Environmental Activists*, *Conservation and Human Rights Policy Matters* (ICUN Commission on Environmental, Economic and Social Policy, 2007).

<sup>11</sup> UN General Assembly, *United Nations Framework Convention on Climate Change* (UNFCCC): resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189.

<sup>12</sup> Conference of the Parties, *Adoption of the Paris Agreement* (PCA), 12 December 2015, UN Doc. FCCC/CP/2015/L.9/Rev/1.

<sup>13</sup> Karin Arts, 'Children's Rights and Climate Change', *Children's Rights and Sustainable Development: Interpreting the UNCRC for Future Generations* (Cambridge University Press 2019) 220.

### 1.3. Children's Particular Vulnerability to Climate Change

Today, there are 2.2 billion children on the earth.<sup>14</sup> There are an estimated 1.8 billion young people between 10 to 24 years old, representing the largest generation of youth in history. Approximately 90% of these children live in developing countries.<sup>15</sup> Children are in a critical stage of physiological and cognitive development. They have innate curiosity leaving them at a heightened risk of exposure to environmental hazards. Children and youth combined represent the majority of the population in the world's 48 least developed countries.<sup>16</sup> Children are particularly affected by climate change as they are exposed to both its present and future consequences.<sup>17</sup> A growing body of research suggests that children are more prone to the adverse effects of climate change than adults.<sup>18</sup> The consequences of this manifest in:

- limited access to clean drinking water,
- an increase of diseases such as diarrhoea, cholera and malaria,
- the reduction of nutritionally adequate food,
- an increase in disaster-related child mortality rates,
- severe mental health effects on children suffering from PTSD following disasters and conflicts and anxiety about the future.<sup>19</sup>

The leading causes of death in children globally are malnutrition, acute respiratory infections, diarrhoea, malaria and other water and vector-borne diseases which thrive in climatic conditions.<sup>20</sup> Predictions estimate that approximately 175 million children a year will be affected by climate-related disasters disrupting children's quality of health and life over the next decade. In the next two decades, an additional 125 million African children will be subjected to water scarcity, and by 2050 an estimated 25 million more children will be undernourished due to climate change.<sup>21</sup> According to the Ecological Threat Register, there has been a tenfold increase in the number of natural disasters occurring globally since the 1960s. Data reveals an increase from 39 incidents in 1960 to 396 incidents in

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<sup>14</sup> 'Children in the World' (*Humanium*) <https://www.humanium.org/en/children-world/#:~:text=Today%2C%20there%20are%20more%20than,life%20as%20their%20Western%20counterparts.>

<sup>15</sup> 'Youth and the SDGs' (UN Sustainable Development) <https://www.un.org/sustainabledevelopment/youth/>

<sup>16</sup> Arts (2019) (n 13) 218.

<sup>17</sup> Ibid 219.

<sup>18</sup> Ebi L Kristie and Jerome A Paulson, 'Climate Change and Children' (2007) 54 *Paediatric Clinic of North America* 213.

<sup>19</sup> Arts (2019) (n 13) 218.

<sup>20</sup> Katharina Ruppel-Schlichting and Sonia Human, 'Climate Change and Children's Rights: An International Law Perspective.', *Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility* (Nomos 2013) 354.

<sup>21</sup> UNICEF Innocenti, 'Child Rights at Risk: The Case for Joint Action on Climate Change' (*UNICEF-IRC.org*) <https://www.unicef-irc.org/article/928-child-rights-at-risk-the-case-for-joint-action-with-climate-change.html>.



2019.<sup>22</sup> Climate change has forced millions of people into displacement and has provoked violence and war in many regions leaving millions of children's right to life, survival and development in jeopardy.

Children worldwide have started school strikes, protests and social media campaigns. The burgeoning children's climate movement has reached multiple legal systems worldwide. Are children's voices being heard by the CRC Committee on one of the most critical issues that will define our very existence in years to come?

#### 1.4. The Scientific Predictions

Before delving into the research question and methodology of this thesis, this section provides a brief picture of what the science is saying regarding climate change as of 2021. There is more CO<sub>2</sub> in the atmosphere than at any other time in the past 800,000 years. One of the experts in the high profile climate case, *Juliana v United States*, Dr Harold R. Wanless, stated that:

"[a]tmospheric warming will continue for some 30 years after we stop putting more greenhouse gasses into the atmosphere. But that warmed atmosphere will continue warming the ocean for centuries, and the accumulating heat in the oceans *will persist for millennia*".<sup>23</sup>

The science is crystal clear, and there have been unequivocal predictions concerning climate change and its consequences for our future children for decades now. The Earth is 1.1°C hotter than before the industrial revolution, and as a human race, we are moving towards irreversible catastrophic effects. Scientists have said that if the Earth reaches 2°C of heating, the exacerbated air pollution will cause 150 million deaths. The current trajectory is that the Earth will reach 3-4°C of heating by 2100 if states do not drastically reduce emissions. In 80 years from now, the impacts of climate change will threaten the lives of over two billion children.<sup>24</sup>

The UNFCCC released its Fifth Assessment Report in 2013, warning the world of concerns over ocean warming and acidification, shrinking of glaciers and polar ice sheets and rising sea levels, all of which, in turn, combine to produce extreme weather events unpredictably across the globe.<sup>25</sup> Despite this report being published eight years ago, CO<sub>2</sub> levels passed an alarming milestone in 2021, with

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<sup>22</sup> 'Global number of natural disasters increases ten times' (*Vision of Humanity*, 2020) <https://www.visionofhumanity.org/global-number-of-natural-disasters-increases-ten-times>. accessed 23 May 2021.

<sup>23</sup> *Juliana v. US.*, No. 18-36082, D.C. No. 6:15-cv-01517AA (US. 9<sup>th</sup> Cir. 2020) 34-35 (*emphasis added*).

<sup>24</sup> *Sacchi et al. v. Argentina, Brazil, France, Germany and Turkey*, 104/2019-Argentina, 105/2019-Brazil, 106/2019-France, 107/2019-Germany, and 108/2019-Turkey (CRC Committee pending, 23<sup>rd</sup> September 2019) 1.

<sup>25</sup> IPCC, 'Summary for Policymakers: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the IPCC' (Cambridge University Press, United Kingdom and USA, 2013) 27.

concentration levels soaring past a frightening threshold of nearly a 50% increase from preindustrial times.<sup>26</sup>

## **1.5. Research Question, Methodology & Outline**

### **1.5.1. Research Question**

This thesis addresses the fundamental question of whether the CRC's legal framework adequately protects children's right to health and right to life in the face of a climate change crisis. To accomplish this, the following four sub-questions will be addressed:

1. Do articles 24 and 6 CRC provide children with adequate protection in the context of climate change?
2. How often does the CRC Committee report on climate change in its COs and GCs within the context of the right to health and right to life?
3. Are child climate refugees adequately protected under the CRC in light of the recent mass displacement due to climate change?
4. Is OPIC an effective mechanism in providing a remedy to the all-encompassing challenges of climate change and its threats to children's rights?

### **1.5.2. Methodology**

Climate change undoubtedly infringes on many children's rights. However, the right to health and the right to life were chosen as they are inherently linked to one another and have fundamental importance for children's well-being. If these two rights are not fulfilled, all other rights under the CRC become meaningless. Moreover, climate change is profoundly violating children's rights under articles 24 and 6. Analyzing these two provisions is an effective way of assessing the adequacy of the CRC's legal framework in protecting children's rights in the face of climate change.

I conduct extensive library research, attend climate change conferences and consult with various children's rights experts in the field. This thesis is mainly qualitative and is based on different legal sources, including treaties, jurisprudence, academic literature, journals, reports and websites. It is supplemented by quantitative information at relevant points such as statistics and figures.

I analyze 123 COs issued between 2014 and July 2021 to determine the frequency in which the keywords "climate change", "environment", "health", and "life" appear. All COs are examined using the UN Human Rights Treaty Bodies Database. It is important to note that the right to health and the right to life are only considered if they are mentioned in the context of climate change or environmental matters. The scope of this research was expanded to include the "environment" because this word frequently appears within reporting and is often indirectly linked to climate change.

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<sup>26</sup> Harry Baker and Staff Writer, 'Atmospheric CO<sub>2</sub> will pass an alarming milestone in 2021' (*livescience.com*, 2021) [https://www.livescience.com/CO<sub>2</sub>-concentration-rising-past-alarming-threshold.html](https://www.livescience.com/CO2-concentration-rising-past-alarming-threshold.html).

I have compiled my research findings from the COs in table format in annexes A and B. Annexe A illustrates states that are considered some of the most significant contributors to climate change and have a % CO<sub>2</sub> global share of 0.11% or higher. In this table, I present the country, year, and frequency in which climate change, the environment, the right to health and the right life are mentioned. The following two columns represent the % share of global CO<sub>2</sub> for which the state is responsible and then the calculated tons per capita figure, which illustrates the individual carbon footprints per individual. In annexe B, I create a second table showing all the states with a % CO<sub>2</sub> global share of less than 0.09%. In annexe C, I make the visible trend within the COs more transparent for the reader by providing the percentile ranges of the frequency in which the selected keywords appeared each year.

I also examine the CRC's 25 GCs issued as of July 2021 for the same keywords mentioned above to assess their frequency. Thus, I created a table under annexe D to demonstrate my findings. Similarly, the keywords are only considered if mentioned in the context of the environment or climate change. To clarify, the 'environment' as a keyword can be defined as the natural world encompassing all living and non-living things affected by climate change. This contrasts with the Committee's other references, such as the 'family' or 'educational' environments, unrelated to climate change. Therefore, such references are omitted from the research findings. I have split articles 24 and 6 into two sister chapters using similar methodologies in my examination. When analyzing all the keywords above, my research assessed whether a reference was made in a contextualized manner or vague or generic terms.

I monitor global internal displacements between January 2020 and May 2020 using the International Organization for Migration (IOM) Displacement Tracking Matrix (DTM).<sup>27</sup> This data is obtained from the International Displacement Monitoring Centre (IDMC).<sup>28</sup> In annexes E to I, I created five tables separated by different regions worldwide, demonstrating the prevalence of internal displacement. These tables show the number of people who were displaced due to climate change and how many as a result of war or violence. I explicitly state the reason for displacement beside each country, giving the reader a complete picture of the various forms of disasters and the prevalence of wars and violence occurring worldwide. These tables illustrate how the global migration crisis is growing and how we are on track for seeing up to 1 billion climate refugees by 2050. As a result, this thesis analyzes how much protection is offered to climate refugees in light of the restrictive definition under the 1951 Convention and states' strict immigration laws. These tables illustrate the gravity of the situation and how the CRC's legal framework lacks adequate protection for child climate refugees.

Furthermore, I examine the Committee's jurisprudence, focusing on the landmark case of *Sacchi*, which helps in assessing how the right to health and right to life can be invoked in the context of climate change. Other relevant climate litigation cases are examined using the Climate Change Litigation Databases by the Sabian Centre for Climate Change Law. I also examine the positive and negative elements of the CRC's Third Optional Protocol (OPIC) and how effective this mechanism is in offering remedies for child rights violations.

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<sup>27</sup> 'Internal Displacement 2020: Mid-Year Update' (IDMC, 2021) <https://www.internal-displacement.org/mid-year-figures>. accessed 21 February 2021.

<sup>28</sup> <https://www.internal-displacement.org/>.

### 1.5.3. Outline

The thesis proceeds from the premise that the CRC Committee has taken a peripheral and nuanced stance in holding states accountable for their climate inaction. This research aims to shine a light on the lack of urgency behind fighting climate change and some of the limitations of the CRC's legal framework.

Firstly, chapter 2 will discuss how climate change is adversely impacting millions of children's health worldwide through malnutrition, water scarcity, diseases and pollution. This chapter will underscore the general characteristics of the CRC's implementation and monitoring, highlighting states' obligations under article 24. I will examine the CRC's COs from 2014 to 2021 to explore the nexus between children's rights, climate change and the right to health using the above methodology. An analysis will be conducted with other Human Rights Treaty Bodies (HRTB's) to assess how the CRC Committee measures in comparison. This will follow with an analysis of the GCs through the lens of article 24 CRC. This chapter aims to explore how climate change affects children's right to health and demonstrate how states are continuously violating this provision regarding climate change using the business sector as an example.

Chapter 3 will apply a similar methodology in the context of the right to life, survival and development. States obligations under article 6 CRC will be explored, and the COs and GCs will be examined through the lens of this provision. In this chapter, I will explore the impacts of climate change on children's right to life. This chapter will present the Genocide-Ecocide nexus, which negatively impacts indigenous children's health, life and culture. I briefly examine how climate change triggers war and violence and results in mass internal and external displacement. This chapter highlights the problem of climate refugees and how disasters are the single most significant driver of displacement today. This section will highlight the protection offered to climate refugees under the CRC and how this translates into practice in light of the restrictive definition of a refugee under the 1951 Convention. The case of *Teitiota v New Zealand* is used as an example to illustrate how children are being sent back to small island states such as Kiribati, where their chances of good health and a safe and dignified life are meagre.

In chapter 4, I examine the proliferation of climate litigation being initiated in the context of the right to health and the right to life across different jurisdictions globally. This chapter assesses the recent drivers and trends of litigation and how OPIC is used as a tool within the CRC's legal framework to protect and enforce children's rights. The case example of *Sacchi*<sup>29</sup> is used to demonstrate how children are exercising agency over their rights and confronting the CRC Committee on climate change. Following this, other recent significant litigation from various national courts is discussed to conceptualize the right to health and right to life as essential tools governing climate change.

In conclusion, part 5 provides a summary of the main arguments raised in this thesis and some reflections for moving forward.

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<sup>29</sup> *Sacchi et al.* (n 24)

## Chapter 2

### Children's Right to Health & Mother Nature's Unequivocal Message For the World to Stop

#### 2.1. Introduction

Climate change impacts children's right to health in unprecedented ways and has been cited as the most significant health crisis of the 21<sup>st</sup> century.<sup>30</sup> The CRC Committee held that states should put children's health "concerns at the centre of their climate change adaptation and mitigation strategies".<sup>31</sup>

Section 2.2. begins by providing a brief overview of the general characteristics of the CRC concerning its implementation and monitoring. Next, states obligations under article 24 will be examined in light of the typology to *respect, protect and fulfil*. This chapter will examine aspects such as progressive realization, minimum core obligations, retrogressive measures and international cooperation.

Section 2.3. will examine the CRC's implementation and monitoring through its COs and GCs in light of article 24 CRC. This section will analyze the frequency in which the right to health, climate change and the environment are interlinked in COs from 2014 to 2021 using the above methodology. This chapter considers if references made to the environment are adequate in protecting children's rights in the context of climate change. The CRC Committee is comparatively analyzed with other Human Rights Treaty Bodies (HRTB's) to assess who is reporting on climate change more frequently. Next, the CRC's GCs will be examined using the same methodology as the COs.

Section 2.4. discusses how climate change negatively impacts the realization of children's right to health through issues such as malnutrition, infectious diseases, water scarcity, air pollution and mental health. The final section examines how states are violating children's right to health using the business sector as an example. This chapter discusses how the CRC Committee must emphasize states' due diligence obligations to promulgate, implement and enforce principles that are in compliance with fighting climate change using deforestation within the Brazilian Amazon as an example.

#### 2.2. Legal Framework

##### 2.2.1. The CRC's General Characteristics Concerning Implementation and Monitoring

The national implementation of the CRC is contextually and culturally determined and can differ from state to state. However, some supranational norms and principles have emerged through the

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<sup>30</sup> Laura Anderko and others, 'Climate Changes Reproductive and Children's Health: A Review of Risks, Exposures, and Impacts' (2019) 87 Paediatric Research 414.

<sup>31</sup> CRC Committee, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, 17 April 2013, CRC/C/GC/15, para 50.

Committee's COs and GCs.<sup>32</sup> The CRC reporting procedure has been a catalyst for strengthening and empowering Non-Governmental Organizations (NGO's) and National Human Rights Institutions (NHRI's) participation. NGO's are motivated to submit one national report and also have the possibility to submit various optional supplementary reports.<sup>33</sup> The COs are organized through the clustering of rights and address different issues raised by the government or NGO's.<sup>34</sup>

A huge criticism of the CRC reporting mechanism is its considerable backlog. The Committee has a relatively short time to elaborate on the COs, resulting in very similar reports being given to states that are quite different from each other. This undermines its credibility as some reports are not considered until two years later, resulting in outdated information being reviewed. The states' follow-up procedure is left in the hands of NGO's and governments, who often do not follow through effectively.<sup>35</sup> These concerns were addressed in 2005 by former CRC Committee chairman Jaap Doek who initiated the change whereby the Committee would operate in two chambers that facilitated additional resources and saved time.<sup>36</sup> Despite this great initiative, today, the Committee still struggles and has fallen behind recently due to COVID-19 and the transition to the digital environment. Another initiative introduced in reducing the backlog was the implementation of a Simplified Reporting Procedure. This three-step procedure (report, list of issues, responses) has been reduced to two.<sup>37</sup> Despite the complex and challenging nature of monitoring the CRC, research has demonstrated that some COs have accelerated policy and legislative measures.<sup>38</sup>

## 2.2.2. States Obligations Under Article 24 CRC

Children's right to health is protected under various international human rights instruments, most notably article 24 CRC.<sup>39</sup> Article 24(1) states that children have the right to the "enjoyment of the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health". The accessibility component in this provision is non-specific and can be interpreted as having

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<sup>32</sup> Sloth-Nielsen (n 7) 33.

<sup>33</sup> Ibid 60.

<sup>34</sup> 'Concluding Observations: CRC Reporting Cycle' ([crcreporting.childrightsconnect.org](https://crcreporting.childrightsconnect.org), 2020) <https://crcreporting.childrightsconnect.org/convention-on-the-rights-of-the-child-concluding-observations/>.

<sup>35</sup> Jaap Doek, 'The CRC: Dynamics and Directions of Monitoring its Implementation', *The Human Rights of Children: From Visions to Implementation* (Ashgate Publishing Ltd 2013) 103.

<sup>36</sup> Doek 2019 (n 7) 21.

<sup>37</sup> Ibid 21.

<sup>38</sup> Jasper Krommendijk, 'The (in)effectiveness of UN human rights treaty body recommendations' (2015) 33 *Netherlands Quarterly of Human Rights* 221.

<sup>39</sup> article 25(1) UDHR; article 12 ICCPR; article 5(e)(iv) CERD; article 11(1)(f) CEDAW; WHO Constitution.

a broad definition inclusive of all children.<sup>40</sup> The CRC Committee views health “as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.<sup>41</sup>

States must take measures to diminish infant and child mortality rates<sup>42</sup> and emphasize the provision of primary health care for children ensuring access to necessary medical assistance and health care.<sup>43</sup> Primary health services must be available in sufficient quantity and quality and must be within all children’s physical and financial reach. In addition, states must take measures to combat disease and malnutrition, provide “nutritionally adequate, culturally appropriate and safe food”, as well as clean drinking water.<sup>44</sup>

The CRC explicitly notes the dangers and risks of environmental pollution.<sup>45</sup> The Committee recognizes that pollution can affect children within their households or outside and may be caused by inadequate standards of living and business activities.<sup>46</sup> States must provide pre-natal and post-natal health care for mothers.<sup>47</sup> Parents and children must be sufficiently informed and have access to education, including basic knowledge of child and health nutrition, the advantages of breastfeeding, hygiene, environmental sanitation and the prevention of accidents.<sup>48</sup> Children’s best interests should always be primarily considered when constructing policies and programmes that affect the underlying determinants of children’s health.<sup>49</sup>

### **2.2.3. To Respect, Protect and Fulfil**

States obligations under article 24 CRC are classified under the typology to *respect, protect* and *fulfil*.<sup>50</sup> Firstly, any state action, policy or law that is “likely to result in bodily harm, unnecessary morbidity and preventable mortality constitutes a violation of the obligation to *respect* the right to

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<sup>40</sup> Wouter Vandenhoele, Erdem Türkelli and Sara Lembrechts, 'Article 24: The Right to Health', *Children's Rights: A Commentary on the Convention on the Rights of the Child and its Protocols* (Edward Elgar Publishing 2019) 255.

<sup>41</sup> CRC/C/GC/15 para 4.

<sup>42</sup> article 24(2)(a) CRC; CRC/C/GC/15 para. 33; SDG 3 - 'ending preventable deaths of new-borns and children under five years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-fives mortality to at least as low as 25 per 1,000 live births' by 2030.

<sup>43</sup> article 24(2)(b) CRC.

<sup>44</sup> CRC/C/GC/15 para 43 and 48.

<sup>45</sup> article 24(2)(c) CRC.

<sup>46</sup> CRC/C/GC/15 para 49.

<sup>47</sup> article 24(2)(d) CRC.

<sup>48</sup> Ibid (2)(e).

<sup>49</sup> article 3(1) CRC; CRC/C/GC/15 para 13.

<sup>50</sup> CRC/C/GC/15 para 71.

health.”<sup>51</sup> Secondly, states must *protect* by taking all the necessary measures to prevent any third-party infringements.<sup>52</sup> Thirdly, states must *fulfil* this provision by taking “all necessary steps to ensure the realization of the right to health” and not only its minimum core obligations.<sup>53</sup> The Committee on Economic, Social and Cultural Rights (CESCR) has defined the right to health as a “right to the enjoyment of various facilities, goods, services and conditions necessary to realize the highest attainable standard of health”.<sup>54</sup> This includes the underlying determinants of health such as “food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions and a healthy environment”.<sup>55</sup>

#### 2.2.4. Progressive Realization

In principle, all rights are indivisible, interrelated, and interdependent. However, some rights are immediately enforceable, while others are subject to progressive realization over time.<sup>56</sup> The wording in article 24(1) CRC concerning the term “strive to ensure” highlights the progressive nature of this right.<sup>57</sup> Article 24(4) CRC explicitly states that the right to health shall be achieved “progressively” and where necessary through international cooperation. In the CESCR’s GC No. 3, progressive realization is described as a “necessary flexibility device” that helps states achieve the full realization of the right to health under article 2(1) ICESCR.<sup>58</sup>

#### 2.2.5. Retrogressive Measures & Minimum Core Obligations

The CRC Committee obliges states not “to take any retrogressive steps that could hamper the enjoyment of children’s right to health,” and any decision should be carefully deliberated and justified.<sup>59</sup> The CRC’s minimum core obligations for children’s right to health include the following:

- (a) Reviewing the national and subnational legal and policy environment and, where necessary, amending laws and policies;

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<sup>51</sup> CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, para 50 (*emphasis added*).

<sup>52</sup> Ibid 51.

<sup>53</sup> Ibid 52.

<sup>54</sup> Ibid 9 and 11.

<sup>55</sup> Ibid 4.

<sup>56</sup> Sloth-Nielsen (n 7) 32.

<sup>57</sup> Vandenhoe et al. (n 40) 258.

<sup>58</sup> CESCR, *General Comment No. 3: The Nature of States Parties’ Obligations* (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, para 9.

<sup>59</sup> Ibid 72.



- (b) Ensuring universal coverage of quality primary health services, including prevention, health promotion, care and treatment services, and essential drugs;
- (c) Providing an adequate response to the underlying determinants of children's health; and
- (d) Developing, implementing, monitoring and evaluating policies and budgeted plans of actions that constitute a human rights-based approach to fulfilling children's right to health.<sup>60</sup>

#### **2.2.6. International Co-operation**

The CRC Committee held that states have an obligation "to contribute to the global implementation" of children's right to health, particularly among the poorest and developing nations.<sup>61</sup> Noteworthy is how the CESCR, in its GC No. 14, addresses the concept of international extraterritorial obligations in which states must respect "the enjoyment of the right to health in other countries" when acting as members of an international organization.<sup>62</sup> Considering the knowledge, data and other resources needed for combating climate change, international co-operation is a fundamental element of a child rights-based approach to addressing this crisis.<sup>63</sup>

#### **2.2.7. Concluding Observations**

The CRC Committee plays a significant role in monitoring states performance in realizing children's rights through its systematic reporting procedure found chiefly under article 44 CRC. States must report on children's rights within their jurisdiction. In addition, the CRC Committee is responsible for providing further information and an overall assessment in the form of COs, which impose no legal obligations on states but are considered highly authoritative.<sup>64</sup> The COs have been recognized as an agenda for action, but "there is no formal mechanism to ensure that the recommendations made by the CRC Committee are actually implemented".<sup>65</sup> Sahovic et al. argues that:

[i]mplementation depends on the measures the government is willing to take, the priorities within the policies and programmes of the state, and the allocation of adequate human and financial resources.<sup>66</sup>

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<sup>60</sup> Ibid 73(b).

<sup>61</sup> CRC/C/GC/15 para 86.

<sup>62</sup> Ibid para 39.

<sup>63</sup> Arts (2019) (n 13) 222-223.

<sup>64</sup> Arts (2019) (n 13) 229.

<sup>65</sup> Sloth-Nielsen (n 7) 44.

<sup>66</sup> Nevena Vuckovic Sahovic, Jaap E. Doek and Jean Zermatten, *The Rights of the Child in International Law* (1st edn, Stampfli Publishers 2012) 364.

Therefore, due to political and economic reasons, important issues such as climate change do not often appear in reports as this is not mandatory. Sloth-Nielsen notes how the sheer volume of available information is a burden to the Committee, which often drowns in reports, submissions, summaries and background briefings, making it difficult to “see the wood for the trees”.<sup>67</sup> Moreover, a robust follow-up procedure has not been established as the CRC Committee is overloaded with reviewing reports on the Convention and its three Optional Protocols.<sup>68</sup> Mechlem argues that:

[u]nfortunately, given the relatively short time that the treaty bodies can dedicate to each country, the COs remain often at a rather general level, and their jurisprudential impact is marginal and exceptional.<sup>69</sup>

Extensive independent research on the COs from 2014-2021 has helped to analyze the adequacy of the CRC’s legal framework in the context of climate change.<sup>70</sup> This research examined the frequency in which issues such as climate change and the environment are mentioned in reports. Other indicators such as the right to health, the right to life, the states’ percentage share of global emissions, and tons per capita of CO<sub>2</sub> have been compiled and presented in annexes A and B.

### 2.2.7.1. Climate Change

In the 123 COs analyzed from 2014-2021, climate change has been mentioned in 43 reports representing 35% of COs. The breakdown of this is 2/16 COs in 2014, 4/19 in 2015, 7/23 in 2016, 9/21 in 2017, 8/17 in 2018, 8/17 in 2019, 5/9 in 2020 and 0/1 in 2021.<sup>71</sup> As of July 2021, only one CO has been issued to Luxembourg.<sup>72</sup>

As illustrated in appendix A, where states have a global percentage share of CO<sub>2</sub> of 0.11% or higher, there is a far less likely chance that climate change will be mentioned in their COs. From 2014-2020, only 12 reports from these high emitting states mentioned climate change, representing 10% of all COs issued during this period. In contrast, as illustrated in appendix B, states with a global percentage share of CO<sub>2</sub> of 0.09% or lower are far more likely to mention climate change in their COs. From 2014-2021 the COs issued to developed states mention climate change 31 times, representing 25% of all COs. This is almost three times more than those listed in appendix A. Considering states such as China, India, Russia, Japan, Germany, Iran, South Korea, Saudi Arabia, Indonesia and Canada are the CRC’s highest emitting states, it is perplexing to find that in the past eight years, only two of these state reports mention climate change.

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<sup>67</sup> Sloth-Nielsen (n 7) 44.

<sup>68</sup> Ibid 44.

<sup>69</sup> Kerstin Mechlem, 'Treaty Bodies and the Interpretation of Human Rights' (2009) 42 Vanderbilt Journal of Transnational Law 922.

<sup>70</sup> 'Treaty Bodies Search' ([ohchr.org](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5))  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5).

<sup>71</sup> See annexe A.

<sup>72</sup> See annexe A, B and C.

The CRC's lack of reporting illustrates a lack of urgency regarding climate change within its reporting mechanism. In the COs where climate change is mentioned, the Committee rarely provides specific conclusions about the exact issue contributing to emissions, such as those of the business sector and individual consumption patterns as demonstrated in the per capita section in the attached annexes. The CRC Committee fails to list climate change as a priority issue which "delegitimizes its status as a catastrophic and existentialist threat".<sup>73</sup> Burkard uses the analogy of the CRC Committee "using an elephant squirt to extinguish the flames of a burning house," which accurately describes the protection offered to children in light of the current climate crisis.<sup>74</sup>

#### **2.2.7.2. The Environment**

On a more positive note, the CRC Committee mentions the environment in considerably more COs than climate change. The environment was mentioned in 6/16 COs in 2014, 12/19 in 2015, 14/23 in 2016, 8/21 in 2017, 14/17 in 2018, 13/17 in 2019, 4/9 in 2020 and 0/1 as of July 2021.<sup>75</sup> This represents 71/123 COs illustrating a total of 58% of reports in the past eight years. The references to conventional environmental measures such as lowering pollution levels are critical to the quality of children's lives. However, from an ethics perspective, the climate differs fundamentally from the environment. It is essential to avoid conflating these two terms. The CRC's references to the environment cannot substitute the emergency actions required to mitigate the climate crisis. The CRC Committee cannot be excused for failing to discuss climate change effectively while ignoring its global consequences just because it refers to the environment. Thus, conventional environmental measures are not sufficient or considered a substitute to confronting climate change.

#### **2.2.7.3. The Right to Health**

The right to health was mentioned in 5/16 COs in 2014, 7/19 in 2015, 13/23 in 2016, 3/21 in 2017, 12/17 in 2018, 8/17 in 2019, 4/9 in 2020 and 0/1 in July 2021. The right to health was mentioned in 52 reports, representing 42% of COs issued. The right to health was only considered to have been mentioned if it appeared in the context of 'climate change' or the 'environment'. The section in which health is most frequently mentioned is under children's rights and the business sector. From these research findings, it can be concluded that the CRC Committee considers health as an important element concerning the environment and climate change and recognizes the impact this crisis is having on children's health.

#### **2.2.7.4. Comparison to other Human Rights Treaty Bodies (HRTBs)**

None of the key HRTBs have explicitly mentioned climate change in any of their human rights legal instruments. However, the promotion of human rights in the context of climate change has been increasingly reported in in-state reporting procedures. The graph below represents the references made to climate change at various reporting stages from the most active HRTBs. The data included in

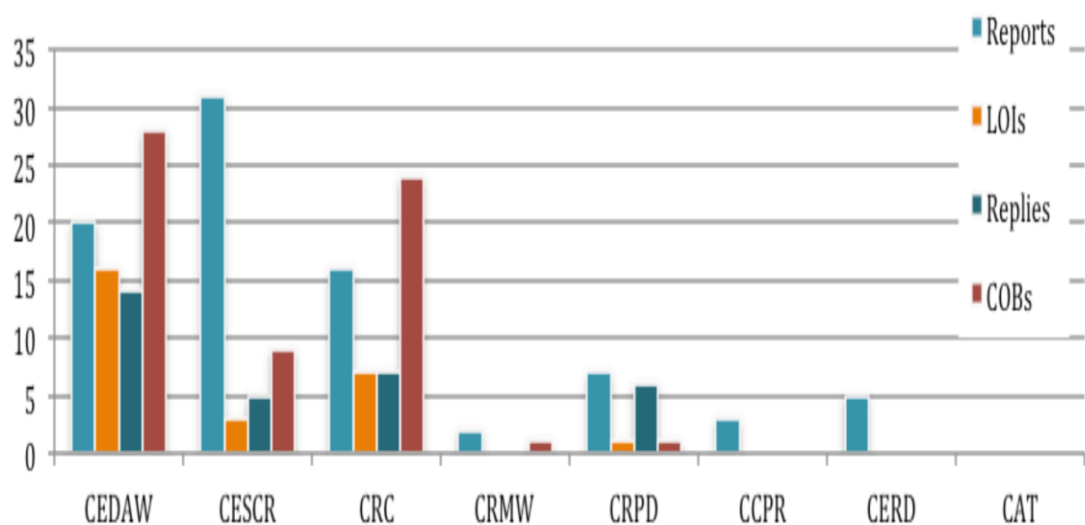
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<sup>73</sup> Walter J. Burkard, 'A Matter Of [A Dignified] Life And Death - Climate Change and Children's Rights' (Advanced LLM International Children's Rights, Leiden University 2020) 15.

<sup>74</sup> Ibid 14.

<sup>75</sup> See Appendix C for a graph comparison between climate change and the environment within the CRC's CO's.

this graph represents reports up to January 2018. The reports and replies section refers to the information submitted by states in implementing their own obligations



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The CRC Committee has fallen behind other HRTBs such as the Committee on the Elimination of Discrimination against Women (CEDAW) regarding references to climate change in their reports, List of Issues (LOIs), Replies and COs. The CESC also contains significantly more references to climate change in its reports than the CRC. Other treaty bodies such as CRMW, CRPD, CCPR, CERD and CAT do not contain many references to climate change as the CRC.<sup>77</sup> Considering climate change is a children's rights crisis, it is disappointing that CEDAW and the CESC contain more references to climate change.

### 2.2.8. General Comments

Since 2001 the CRC Committee has regularly issued GCs which elaborate on specific provisions and address cross-cutting issues.<sup>78</sup> Although not legally binding, GCs can be interpreted authoritatively and are valuable sources in interpreting the CRC. Only six of the twenty-five GCs issued as of July 2021 have addressed environmental matters. Albeit, when the environment is mentioned, it tends to be in vague and general terms. The Committee refers to the environment in 11/25 GCs. However, most of these references are not elaborated on extensively.

Climate change has only been explicitly mentioned in GC No.15 on the right to health, where the CRC Committee noted how climate change "is one of the biggest threats to children's health and exacerbates health disparities".<sup>79</sup> It emphasized that states need to put children's health concerns at

<sup>76</sup> Data obtained from: Center for International Environmental Law & the Global Initiative for Economic, Social and Cultural Rights, 'State's Human Rights Obligations in the Context of Climate Change' (2018) 5.

<sup>77</sup> Ibid 5.

<sup>78</sup> Arts (2014) (n 9) 190-191.

<sup>79</sup> CRC/C/GC/15 para 50.

the centre of their climate change adaptation and mitigation strategies.<sup>80</sup> The Committee refers to the importance of monitoring “the environmental impact of business activities that may compromise children’s right to health, food security and access to safe drinking water and sanitation”.<sup>81</sup> The Committee also notes states responsibility to effectively manage waste, dispose of litter, and address mould and other toxic substances.<sup>82</sup>

GC No. 16 highlights the “dangers and risks that local environmental pollution pose to children’s health.”<sup>83</sup> Air pollution is now considered the world’s most significant environmental health threat, accounting for seven million deaths worldwide every year. SDG 3.9 aims to substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution, and contamination by 2030. The CRC Committee has urged for immediate action to be taken to prevent further damage to children’s health and development in environmental pollution and repair any damage already caused.<sup>84</sup>

The CRC has been procrastinating and deliberating on a GC on climate change for almost a decade now. Finally, the Committee announced at the end of its 87<sup>th</sup> online session that it will prepare its next GC under the working title ‘Children’s rights and the environment with a special focus on climate change’.<sup>85</sup> Despite only one GC mentioning climate change, the following section highlights how the CRC Committee has indirectly mentioned children’s right to a healthy environment in several of its GCs.

States have taken innovative measures to realize children’s right to a healthy environment. Bolivia, El Salvador, Mexico and Paraguay have introduced national legislation recognizing children’s right to a healthy, ecological and sustainable environment. Denmark, Saudi Arabia and Slovenia have introduced measures to protect children from environmental degradation. Australia, Azerbaijan, El Salvador, France, Georgia, the State of Palestine, the Philippines, and Switzerland have all adopted initiatives to enhance children’s environmental education as promoted under article 24(e) CRC.<sup>86</sup> However, the only legalized treaties that enshrine the right to a healthy environment are the African Charter and the San Salvador Protocol. The CRC does not explicitly mention the right to a healthy environment. However, it indirectly implies this through various GCs such as GC No. 1, 7, 14 and 17.

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<sup>80</sup> Ibid.

<sup>81</sup> Ibid 49.

<sup>82</sup> Ibid.

<sup>83</sup> CRC/C/GC/16 para 31.

<sup>84</sup> Ibid.

<sup>85</sup> The CRC Committee Commits to a New General Comment on Children’s Rights and the Environment with a Special Focus on Climate Change’ (*ohchr.org*, 2021)  
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27139&LangID=E>. accessed 23 June 2021.

<sup>86</sup> United National General Assembly, ‘Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment’ (Human Rights Council 2018) para 9.

GC No. 1 underscores article 29(1)(e) CRC on the role of education in developing respect for the natural environment.<sup>87</sup>

GC No. 7 promotes states implementing the right to survival and development holistically by enforcing other CRC provisions, including *inter alia* health, adequate nutrition, and a healthy and safe environment.<sup>88</sup>

GC No. 14 clarifies that the term “public and private welfare institutions” formulated in article 3 CRC refer to institutions that are “related to economic, social and cultural rights (e.g., care, health, environment ...).”<sup>89</sup>

Finally, GC No. 17 ensures that an “environment sufficiently free from waste, pollution, traffic and other physical hazards” is imperative to allow children “to circulate freely and safely within their local neighbourhood” and for allowing them opportunities “to experience, interact with and play in natural environments and the animal world”.<sup>90</sup>

## 2.4 How Does Climate Change Impact Children’s Right to Health?

Climate change threatens the essential ingredients of a child’s health, such as clean air, safe drinking water, adequate and nutritious food supply and safe shelter. These threats have the potential to undermine decades of progress made to global health. It is estimated that between 2030 and 2050, climate change will cause an average of 250,000 additional deaths per year due to malnutrition, malaria, diarrhoea, and heat stress alone. The damage will cost approximately 2-4 billion USD per year by 2030.<sup>91</sup>

### 2.4.1. Malnutrition and Hunger

In 2018, UNICEF estimated that 3.1 million children die from malnutrition every year. This constitutes 45% of children under five years of age living in developing countries. One in six children in developing nations are underweight, and one in four of the world’s children are stunted.<sup>92</sup> The

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<sup>87</sup> CRC Committee, *General comment No. 1 (2001), Article 29 (1), The aims of education*, 17 April 2001, CRC/GC/2001/1, para 13.

<sup>88</sup> CRC Committee, *General comment No. 7 (2005): Implementing Child Rights in Early Childhood*, 20 September 2006, CRC/C/GC/7/Rev.1, para 10.

<sup>89</sup> CRC Committee, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC /C/GC/14, para 26.

<sup>90</sup> CRC Committee, *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*, 17 April 2013, CRC/C/GC/17, para 32.

<sup>91</sup> 'Climate Change and Health' (*Who.int*, 2018) <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>.

<sup>92</sup> Ibid; Child hunger statistics by region: Sub-Saharan Africa (22%), Caribbean (17.7%), Southern Asia (4.4%), South-eastern Asia (11.5%) and Western Asia (10.6%) <https://fifi.org/15280/children-hunger-statistics/>

International Food Policy Research Institute has estimated that by 2050, there will be 20% more children malnourished due to climate change.<sup>93</sup> It is estimated that, in 2080, 550 million people could be hungry due to climate change, of whom 480 million will be living in Africa.<sup>94</sup> Poor nutrition has a long-lasting impact that affects children's brain development, learning capacities and physical stature.<sup>95</sup>

#### **2.4.2. Changing Vector Patterns and Infectious Diseases**

The distribution of disease-carrying vectors is expected to be altered by changing weather patterns, influencing the transmission and survival of infectious pathogens. An example of this is in Uganda, Mali and Zambia, where short-term weather trend changes resulting from climate change have caused high temperatures and increased flooding, which has resulted in more favourable conditions for malaria transmission.<sup>96</sup> Other factors such as changes in land use, population growth, and deforestation also increase vector-borne diseases such as malaria and dengue fever.

#### **2.4.3. Water Scarcity**

Climate change constrains access to clean drinking water and damages the infrastructure that delivers it through flooding, heavy rainstorms, and cyclones. Water pipes are ruptured by salinization from rising sea levels causing contaminated water and droughts.<sup>97</sup> In Bangladesh, research found that diarrhoea increased by 5.1% for every 10-millimetre increase above the threshold of 52-millimetre average rainfall.<sup>98</sup> Another study in Peru indicated that for every temperature increase of one degree Celsius, diarrhoea prevalence increased by 8%.<sup>99</sup> Studies from Niger illustrated that children born under two years old were 72% more likely to be stunted if they were born in a drought year.<sup>100</sup>

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<sup>93</sup> Gerald C. Nelson and others, 'Climate Change: Impact on Agriculture and Costs of Adaptation' (International Food Policy Research Institute 2009) vii.

<sup>94</sup> Ruppel-Schlichting and Human (n 20) 353.

<sup>95</sup> Ibid.

<sup>96</sup> Daniel Helldén and others, 'Climate change and child health: a scoping review and an expanded conceptual framework' (2021) 5 The Lancet Planetary 167.

<sup>97</sup> Elizabeth Gibbons, 'Climate Change, Children's Rights, and the Pursuit of Intergenerational Climate Justice' (2014) 19 Health and Human Rights Journal 20. 21.

<sup>98</sup> Masahiro Hashizume and others, 'Association between climate variability and hospital visits for non-cholera diarrhoea in Bangladesh: effects and vulnerable groups' (2007) 36 International Journal of Epidemiology 1030.

<sup>99</sup> William Checkley and others, 'Effects of *El Niño* and ambient temperature on hospital admissions for diarrhoeal diseases in Peruvian children' (2000) 355 The Lancet 442.

<sup>100</sup> UNICEF-Innocenti Research Centre, 'Climate Change and Children: A Human Security Challenge' (UNICEF, 2008) 11.

Recent studies have revealed that 17 countries, home to one-quarter of the world's population, face 'extremely high' levels of baseline water stress.<sup>101</sup> The CRC Committee obliges states to provide children with safe and clean drinking water but never explicitly scrutinizes business activities that contaminate the water supply.

#### **2.4.4. Mental Health**

A growing body of research links reduced exposure to nature or time spent outside to a decline in child mental health.<sup>102</sup> Air pollution and extreme weather events prevent children from spending time in nature. Although there is limited research on the psychosocial impact of disasters on children's mental health, it can be said that these events cause lasting trauma. In 1999, it was estimated that 30.6% of children and adolescents had PTSD reported after the super-cyclone hit India. In 2010, 73% of children up to 19 years of age in Pakistan showed high levels of PTSD following severe flooding.<sup>103</sup>

### **2.5. How are States Violating Children's Right to Health Concerning Climate Change?**

#### **2.5.1. Children's Rights and the Business Sector**

The CRC Committee mentions children's environmental rights within the business sector in 18/61 COs issued between January 2017 and July 2021. Surprisingly, climate change is not mentioned concerning the business sector in any COs. In GC No.16, the CRC Committee has set down explicit state obligations regarding the impact of business activities and operations on children's rights.<sup>104</sup> The Committee mentions childhood as a "unique period of physical, mental, emotional and spiritual development". Business activities that violate children's rights, such as "exposure to violence", "unsafe products", or "environmental hazards", can have irreversible and transgenerational consequences for our children.<sup>105</sup> Environmental degradation and contamination can negatively impact children's rights to health, food, safe drinking water, sanitation, and security.<sup>106</sup>

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<sup>101</sup> Rutger Hofste, Paul Reig and Leah Schleifer, '17 countries, home to one-quarter of the world's population, face extremely high-water stress' (World Resources Institute, 2019) <https://www.wri.org/insights/17-countries-home-one-quarter-worlds-population-face-extremely-high-water-stress>.

<sup>102</sup> Louv Richard, 'Last Child in the Woods: Saving our Children from Nature-Deficit Disorder' (2006) 16 Children, Youth and Environments 201.

<sup>103</sup> Gibbons (n 97) 22.

<sup>104</sup> CRC Committee, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, 17 April 2013, CRC/C/GC/16, para 2.

<sup>105</sup> Ibid 4(a).

<sup>106</sup> CRC/C/GC/16 para 19.



### 2.5.2. Deforestation

Deforestation increased by 9.5% from August 2019 to August 2020, destroying 11,088 square kilometres of the Amazon Rainforest, an area larger than Jamaica.<sup>107</sup> Brazil is the world's largest exporter of beef and soybeans, and the destruction of the rainforests is driven by farmers who are bulldozing trees and creating forest fires to make way for crops and pasture.<sup>108</sup> Approximately 60% of the Amazon rainforest is on Brazil's territory. Deforestation destroys the equivalent of more than two football pitches every four minutes in the Brazilian Amazon rainforest, which is an essential resource for tackling the climate crisis as it serves as an essential carbon sink that traps up to one-fourth of the world's carbon dioxide. Humanity has destroyed two-thirds of the world's rainforests to meet rich countries consumption needs. These large-scale fumes are so big they can be seen from space.<sup>109</sup> The image depicted below shows two young children crossing the water in the Amazon Rainforest while behind them intentional forest fires burn to make way for agricultural farming.



The CRC Committee must emphasize states' due diligence obligations to promulgate, implement and enforce a regulatory framework that ensures business activities conform with international climate mitigation standards. The far-right Brazilian President Jair Bolsonaro's dismissal of this regulatory framework which restricts the business sector from deforesting the Amazon serves as an example of contraband *de jure* deregulation.<sup>111</sup> Moreover, the CRC Committee must ensure that states' such as

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<sup>107</sup> '2020 another grim year for Brazilian Amazon' (*Phys.org*, 2021) <https://phys.org/news/2021-01-grim-year-brazilian-amazon.html>.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Grace Klopp, 'Amazon Rainforest Fires - Acanela Expeditions' (Acanela Expeditions, 2019) <https://www.acanela.com/blog/amazon-rainforest-updates-after-the-fires>; Image of children playing in the Amazon as it burns from intentional fires.

<sup>111</sup> Burkard (n 73) 16.

Brazil comply with their emissions pledges, such as those set down in the PCA. Alarming, the scrutinization of Brazil's compliance is absent from any of the CRC COs.<sup>112</sup> Since 2015, the Committee has only issued one CO to Brazil, which didn't mention climate change or the environment. This is as a result of states having the freedom to choose whether to list climate change as an issue. Brazil deliberately did not mention climate issues in their reports as a result of political and economic reasons.

On the 11<sup>th</sup> November 2020, seven political parties in Brazil brought a lawsuit against the federal government for failing to implement the national deforestation policy and significantly contributing to climate change.<sup>113</sup> The parties allege that by failing to implement the Prevention and Control of the Legal Amazon Deforestation, the federal government violated the fundamental rights of those living in the Amazon and throughout Brazil, indigenous peoples and present and future generations.<sup>114</sup> This was the first public hearing on climate change that reached the Brazilian Supreme Court, marking a landmark case for Brazil's legal system.<sup>115</sup> This pending lawsuit has come in a moment of extreme urgency as world-renowned scientists have predicted that if we lose 20- 25% of deforestation in the biome, the Amazon will reach a tipping point and cause irreversible changes and permanent loss of ecosystem services.<sup>116</sup>

## 2.6. Conclusion

This chapter has examined the adequacy of the CRC's legal framework in protecting children right to health against the adverse consequences of climate change. This chapter began by delving into the legal framework of the CRC. Section 2.2. examined the CRC's legal framework providing a brief overview of the CRC's general characteristics concerning its implementation and monitoring, highlighting limitations such as the Committee's considerable backlog and the need for a more robust follow-up procedure. Next, states obligations under article 24 CRC were examined in light of the typology to *respect*, *protect* and *fulfil*. The progressive nature of the right to health is underlined within the wording 'shall strive to ensure', and the use of international cooperation in fulfilling rights is noted. This section emphasized the minimum core obligations set by the Committee and how states' must refrain from taking any retrogressive measures within children's rights.

Next, the CRC's COs were examined in light of children's right to health and climate change. The main conclusions drawn were that developed states with a global % share of CO<sub>2</sub> of 0.11% or higher are far less likely to mention climate change in their reports. On the other hand, states with a global %

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<sup>112</sup> "The two years of the Bolsonaro administration have been the worst two years (of deforestation) recorded in the DETER program," said Marcio Astrini of the Brazilian Climate Observatory.

<sup>113</sup> See article 225 of the Brazilian Constitution 1988.

<sup>114</sup> Christian Braga, 'Organisations take Brazilian government to the Supreme Court over deforestation and human rights abuses' (*Greenpeace.org*, 2020) [https://www.greenpeace.org/static/planet4-brasil-stateless/2020/11/67697233-executive-summary-english\\_adpf.pdf](https://www.greenpeace.org/static/planet4-brasil-stateless/2020/11/67697233-executive-summary-english_adpf.pdf).

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

share of CO<sub>2</sub> of 0.09% or lower are far more likely to mention climate change in reports. This section also used keywords such as “environment” and “health” to paint a more precise picture. This chapter submits that the environment was mentioned in 58% of reports from 2014-2021, and the right to health was mentioned in 42% of reports. However, this does not compensate for the lack of reporting on climate change. Conflation should be avoided with these two terms.

A comparative analysis was conducted between the CRC and other HRTBs. It was found that the CRC Committee is falling behind CEDAW regarding references made to climate change in their reports, LOI's, replies and COs. It has also fallen behind the CESCR in references made in their reports concerning climate change. It is disappointing that the CRC Committee is not leading in this respect.

Following this, the GCs were analyzed, and it was found that 6/25 GCs mention environmental matters and 1/25 mention climate change. Hope was revived when the Committee announced in 2021 that they would formulate a long-awaited GC on climate change and the environment. This chapter considered numerous ways in which climate change violates children's right to health, such as malnutrition, changing vector patterns, infectious diseases, water scarcity, air pollution and children's mental health. This chapter concluded by examining how states violate article 24 CRC. This chapter used deforestation in the Brazilian Amazon as an example of where business activities threaten children's health, emphasizing states' due diligence obligations to ensure effective regulation and ensure their activities conform with climate mitigation standards.

## Chapter 3

### Children's Right to Life: The Genocide-Ecocide Nexus, War & Mass Migration

#### 3.1. Introduction

This chapter will examine children's right to life, survival and development under article 6 CRC in the context of climate change. The significance of the right to life is evident from its recognition at national, regional and international levels. This chapter will begin by outlining the legal framework surrounding article 6 CRC by examining states' obligations. A comparative analysis will be conducted with article 6 ICCPR as these provisions are formulated similarly. This analysis clarifies issues such as extraterritorial jurisdiction and progressive realization.

Next, section 3.2.2. will analyze the CRC's COs to determine how frequently climate change and the environment are referred to in the context of the right to life, providing examples from various states using the same methodology as in chapter 2. Next, section 3.2.3. will highlight the nexus between the right to life and climate change by analysing the 25 GCs and providing examples of where a reference is made directly or indirectly.

Section 3.3. will highlight the numerous ways climate change impacts children's right to life. This section also considers the Genocide-Ecocide Nexus in reference to the impact climate change is having on indigenous societies. This chapter submits that climate change triggers war and violence across the world and perpetuates the external and internal displacement of millions of families.

Finally, section 3.4. will discuss the protection afforded to 'child climate refugees' under the CRC in light of present-day conditions. This section analyzes the 1951 Convention's restrictive definition of a refugee and the impact this is having on millions of children today who bear the brunt of this crisis. This section will draw on the landmark ruling of *Teitotia v New Zealand* to demonstrate how climate refugees invoke the right to health and the right life when asking a state not to send them back to a place where their lives are at risk from climate change.

#### 3.2. Legal Framework

##### 3.2.1. States Obligations Under Article 6 CRC

Article 6 CRC is considered a 'supreme right' and is recognized as one of the guiding principles underpinning all other rights under the Convention.<sup>117</sup> Noteworthy is how the CRC Committee has not yet drafted a GC on this provision despite its underlying importance.<sup>118</sup> This right is protected across a

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<sup>117</sup> CRC Committee, *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5 para 12.

<sup>118</sup> Wouter Vandenhoele, Erdem Türkelli and Sara Lembrechts, 'Article 6: The Right to Life, Survival and Development', *Children's Rights: A Commentary on the Convention on the Rights of the Child and its Protocols* (Edward Elgar Publishing 2019) 89.

wide range of instruments.<sup>119</sup> At the national level, the right to life is incorporated chiefly into constitutions worldwide. This provision is non-derogable and imposes a strong obligation on states to ensure children's survival and development to "the maximum extent possible".<sup>120</sup> When states fail to fulfil their obligations under this provision, all other rights under the CRC become meaningless.<sup>121</sup> This reasoning was upheld in the case of *Villagran-Morales et al. v. Guatemala*.<sup>122</sup>

Article 6(1) CRC is primarily negative as states should 'do no harm' and refrain from any unjustified or arbitrary interference and omission.<sup>123</sup> Moreover, the CRC Committee has identified positive obligations under article 6(1) CRC, which include raising public awareness, implementing an appropriate legal framework and enforcing laws that ensure that those who directly or indirectly violate this right are held responsible.<sup>124</sup> However, article 6(2) implies that states shall progressively realize economic, social and cultural conditions of children's survival and development.<sup>125</sup> The CRC Committee has interpreted this provision broadly. Children's right to life and right to health are inherently interlinked, especially regarding access to psychological care, clean drinking water, and a clean environment that promotes children's healthy development.<sup>126</sup>

The right to life should be interpreted narrowly. The *travaux préparatoires* of the CRC indicates that the right to life, survival and development under article 6 are understood as complementary concepts that reinforce each other<sup>127</sup> and are not mutually exclusive.<sup>128</sup> Article 6 CRC is similar to article 6 ICCPR as it protects children against "reasonably foreseeable threats and life-threatening situations that can result in loss of life".<sup>129</sup> The HRC stated that the right to life should not be interpreted narrowly and extended its scope even to include the enjoyment of life with dignity.<sup>130</sup> The right to life also

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<sup>119</sup> article 3 UDHR; article 6 ICCPR; article 2 ECHR; article 4 ACHPR; article 11 CRMW; article 10 CRPD; article 5 and 6 ACHR.

<sup>120</sup> article 6(2) CRC; Vandenhoe et al. (n 118) 88.

<sup>121</sup> Manfred Nowak, *Article 6: the Right to Life, Survival and Development* (A Commentary on the United Nations Convention on the Rights of the Child, Martinus Nijhoff 2005) 1.

<sup>122</sup> *Case of the 'Street Children' (Villagrán-Morales et al.) v. Guatemala, Merits* (IACtHR) 1999, para 144.

<sup>123</sup> Vandenhoe et al. (n 118) 88.

<sup>124</sup> *Ibid* 90.

<sup>125</sup> *Ibid* 89.

<sup>126</sup> Peleg N, 'Time To Grow Up: The UN Committee on the Rights of the Child's Jurisprudence of the Right to Development', *Law and Childhood Studies: Current Legal Issues Volume 14* (Oxford University Press 2012) 382-389; CRC Committee, CRC/C/15/Add.120.

<sup>127</sup> Sharon Detrick and Jaap Doek, 'A Commentary on the United Nations Convention on the Rights of the Child' (2001) 9 *The International Journal of Children's Rights* 120.

<sup>128</sup> UN Commission on Human Rights, Report of the Working Group on a Draft Convention on the Rights of the Child (E/CN.4/1988/28).

<sup>129</sup> *Ibid* para 2.

<sup>130</sup> *Ibid*.

ensures facilities such as access to food, water, and health services.<sup>131</sup> The right to life is dependent upon many other rights illustrating the interrelatedness and interconnectivity of human rights.<sup>132</sup> When determining whether a state has acted with due diligence to protect against unlawful death, the decision is often based on assessing how much the state knew or should have known of the risks, the risks or likelihood of foreseeable harm, and the seriousness of the harm.<sup>133</sup>

The CRC reflects the conception of 'the child' as a developing human being and 'childhood' as a journey towards adulthood. This has been a dominant narrative of international children's human rights law. The protection of a child's right to life, survival, and development best reflects this conception.<sup>134</sup> Children's right to development is mentioned in five other articles under the CRC; articles 18 (parental responsibilities), 23 (children with disabilities), 27 (adequate standard of living), 29 (aims of education) and 32 (economic exploitation). The Committee presents its understanding of development as a "holistic concept embracing the child's physical, mental, spiritual, moral, psychological and social development".<sup>135</sup>

The only provision under the CRC described as 'inherent' is the right to life which cannot be limited even in times of war or public emergencies.<sup>136</sup> States cannot guarantee that every child born will survive, but it is obligated to establish a framework that considerably reduces infant and child mortality rates.<sup>137</sup> The CRC Committee has stated that to fulfil children's right to survive states should implement positive measures which "create an environment conducive to ensuring the maximum extent possible the survival" of the child.<sup>138</sup> One of the most common indicators for assessing children's survival is child mortality rates and the probability of a child dying before reaching five years of age.<sup>139</sup>

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<sup>131</sup> Ibid 26.

<sup>132</sup> Hilal Hareem, 'Climate Change and the Right to Life' (Masters Dissertation, The University of Oslo 2020).

<sup>133</sup> UN Special Rapporteurs, 'Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic: Legal Analysis' (UN Special Rapporteurs 2020) para 15.

<sup>134</sup> Peleg (n 126) 371.

<sup>135</sup> CRC/GC/2003/5 para 12.

<sup>136</sup> Vandenhoe et al. (n 118) 92;

<sup>137</sup> Ibid 92; article 24(2)(a).

<sup>138</sup> CRC Committee, *Guidelines of the Committee on the Rights of the Child Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties under Article 44, Paragraph 1(b), of the Convention (1996)* CRC/C/58, para. 40.

<sup>139</sup> Vandenhoe et al. (n 118) 93.

### 3.2.2. Concluding Observations

The same methodology used in chapter two has been used to examine the right to life between 2014 and July 2021 in the CRC's COs.<sup>140</sup> The right to life in the context of climate change or the environment was mentioned in 12/123 reports during this period, representing 10% of all COs. This is a significantly lower amount than that of article 24. The breakdown per year is 0/16 COs in 2014, 1/19 in 2015, 1/23 in 2016, 1/21 in 2017, 5/17 in 2018, 2/17 in 2019, 2/9 in 2020, 0/1 in 2021 (up to July).<sup>141</sup>

This illustrates how the right to life in the context of climate change or the environment is not commonly cited within the CRC's COs. The right to health, climate change and the business sector are far more regularly clustered together. However, the following are some examples where the Committee has acknowledged the right to life in instances arising from climate change.

The COs issued to Tuvalu and Cook Islands in 2020 serve as an excellent example of the CRC Committee establishing a direct link between climate change and article 6. The Committee notes the increasingly adverse impacts of climate change on children's rights, and they emphasize "the rights to life, survival and development; non-discrimination; education; health; adequate housing; and safe drinking water and sanitation".<sup>142</sup>

In the COs issued to Australia in 2019, articles 6 and 24 are recognized as two provisions jeopardized due to climate change. The Committee held that climate change could have an undeniable impact on children's rights and highlights Australia's insufficient action in meeting its obligations under the PCA, and urges the state to reduce its emissions.<sup>143</sup>

In the COs issued to Niger in 2018, the Committee showed concerns over high child mortality rates and listed climate-induced health issues such as malaria, respiratory and diarrhoea-causing diseases under the heading of right to life.<sup>144</sup>

In the COs issued to Guatemala in 2018, the Committee noted concerns to children's right to life in relation to the high neonatal, infant and child mortality rates, particularly among indigenous children. It also showed concern over the high number of children under five suffering from chronic malnutrition, constituting more than 46.5%, rising to 61.2% among indigenous children. These high mortality rates can be directly linked to climate-induced factors.

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<sup>140</sup> Treaty Bodies Search (n 70).

<sup>141</sup> See annexe A, B and C.

<sup>142</sup> CRC/C/TUV/CO/2-5 and CRC/C/COK/CO/2-5.

<sup>143</sup> CRC/C/AUS/CO/5-6 para 40 and 41(b).

<sup>144</sup> CRC/C/NER/CO/3-5 para 17(b).

### 3.2.3. General Comments

The Committee does not often highlight the nexus between the right to life and climate change or the environment within its GCs. This is surprising considering the important status the Committee has attached to this provision depicting it as a 'guiding principle'. Below are some examples of where this connection is established.

In GC No. 14, the Committee held that states must establish an environment that "respects human dignity and ensures the holistic development of every child". In the assessment process of determining the child's best interests, states must respect children's inherent right to life, survival and development.<sup>145</sup>

In its GC No.16, the Committee explicitly refers to the impact that business activities and operations could have on the realization of children's right to life. The Committee notes that environmental degradation and contamination arising from business activities can compromise children's right to health, food, security, safe drinking water and access to sanitation.<sup>146</sup>

The CRC's GC. No. 11 refers to indigenous children's right to life, which is threatened by climate change. This will be discussed in the following section.

## 3.3. How is Climate Change Affecting Children's Right to Life?

### 3.3.1. Climate Change is Committing an Ecocide on Indigenous Societies

#### 3.3.1.1. Indigenous Children and the CRC

Article 30 CRC and article 27 ICCPR are constructed similarly. They both ensure states respect indigenous people's culture, religion, and language. The Committee states that indigenous children's right to exercise their own culture may be closely aligned with traditional territory and resources.<sup>147</sup> Furthermore, article 29(d) CRC stipulates that the aims of education shall be directed to persons of indigenous origin in the spirit of understanding, peace and tolerance. In 2007 the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples<sup>148</sup>, which provides essential guidance, explicitly acknowledging children.<sup>149</sup> However, this declaration lacks the necessary force to stop predatory states or corporates in their tracks from seizing whatever fossil fuels, timber, or water resources that may lie on or beneath indigenous native soil.<sup>150</sup>

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<sup>145</sup> CRC/C/GC/14 para 42.

<sup>146</sup> CRC/C/GC/16 para 19.

<sup>147</sup> CRC/C/GC/11 para 16.

<sup>148</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP): resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295.

<sup>149</sup> articles 7(2),14(2)(3),17(2), 21(2) and 22(1)(2).

<sup>150</sup> Mark Levene and Daniele Conversi, 'Subsistence Societies, Globalisation, Climate Change and Genocide: Discourses of Vulnerability and Resilience' (2014) 18 *The International Journal of Human Rights* 287.



The CRC Committee issued GC. No.11 on indigenous children's rights in 2009 and has consistently considered this group in periodic reports.<sup>151</sup> The International Labour Organization Convention (ILO) No.169 concerning Indigenous and Tribal Peoples in Independent Countries (1989) also contains provisions that advance indigenous peoples' rights.<sup>152</sup>

The Committee has noted its concerns over disproportionate numbers of indigenous children living below the poverty line with high child mortality rates. The Committee has emphasized the need for special measures to fulfil indigenous children's rights, such as their right to life and an adequate standard of living.<sup>153</sup>

### **3.3.1.2. Climate Change is Violating Indigenous Children's Right to Life**

Human Rights Watch covered indigenous peoples rights in Colombia in 2020. They reported how even before Yamilet, a 15-month-old baby, died of malnutrition her mother would sometimes have days when she could not provide any food for her children. "I'd hug them and cry because I could only give them water," she told reporters as she sat in her tarp-lined shelter in La Guajira in Colombia.<sup>154</sup> Seasonal rains represent a practical and cultural value for the Wayuu community, marking both fertility and the passage of time. Rain replenishes aquifers, sustains animals and signals to farmers when to plant crops.<sup>155</sup> Indigenous children in La Guajira die from hunger at a rate nearly six times the national average.<sup>156</sup>

Another example is the Caimito people living in the Peruvian Amazon, with a population of 30,000 people. They are suffering from an environmental catastrophe as they frequently suffer from oil pipeline leaks, contaminated waterways, and limited access to food and essential health services. The community has one school within a 16-hour radius that consists of three rooms and access to electricity for one hour a day. These examples are just the tip of the iceberg regarding the more significant tragedy unfolding across the Amazon and threatening indigenous communities globally due to climate change.<sup>157</sup>

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<sup>151</sup> CRC/C/GC/11 para 5.

<sup>152</sup> ILO, *Indigenous and Tribal Peoples Convention*, C169, 27 June 1989, C169.

<sup>153</sup> CRC/C/GC/11 para 35.

<sup>154</sup> Alia Sunderji and Hilary Rosenthal, 'Colombia's indigenous children are the casualties of climate change' *The Washington Post* (2020).

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> Sarah Sax, 'The incomprehensible tragedy unfolding in the Amazon during the pandemic' *The Washington Post* (2020).

### 3.3.1.3. The Genocide-Ecocide Nexus

Levene and Conversi argue that neoliberal globalization and concomitant nation-state building can be considered a “structural genocide on indigenous communities”.<sup>158</sup> The global political economies relationship of “business as usual” with the biosphere, illustrated through its continued use of high emissions, gives rise to an acceleration of indigenous societies fragility with potential for extreme violence. The continued release of carbon emissions into the atmosphere directly from the anthropogenic burning of fossil fuels is now having biospheric consequences so profound that it can be considered an omnicide. We must reformulate our principles and standard *modus operandi* in line with climate change, or we quite frankly consign ourselves to the “dustbin of history”.<sup>159</sup>

Crook and Short present the idea of the Genocide-Ecocide Nexus and climate change. This can be comparable to a genocide where communities ‘go along’ with state behaviour and are unwilling to question their government despite the negative impact it is having. Those living in the Global North are most responsible for carbon emissions through their lifestyles and consumption patterns. Many of these small indigenous communities use very low carbon emissions and deploy their labour with a conservation-minded utilization of the earth.<sup>160</sup> As a result, the impact these communities’ have on the climate is negligible compared to the Western-led planetary predation. The Global North principles rely upon an accelerated drive towards the commodification and profit of all goods with no respect for ecological versatility. Consequently, ecocide is becoming inexorable and results in the violation of indigenous peoples right to life, survival and development.<sup>161</sup>

Climate change represents a direct threat to the Arctic North, having a disastrous effect on indigenous communities such as the Saami of northern Scandinavia or the 5000 Mongolian-related Dolgans living on the remote Taimir peninsula in Siberia.<sup>162</sup> Vandana Shiva, a prominent Indian-born environmentalist, discusses how agriculture constitutes the largest livelihood provider in India, which has virtually been dismantled in the Bundelkhand region, resulting in widespread starvation and suicide endemics.<sup>163</sup> It is estimated that more than a quarter of a million Indian farmers have died by suicide in the last 16 years, with an average of one person dying every 30 minutes.<sup>164</sup> Indigenous communities conserve diverse seed varieties from local soils and microclimates, requiring meticulous nurturing of ‘grandmother knowledge’. We must promote, respect and learn these

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<sup>158</sup> Levene (n 150) 281.

<sup>159</sup> Ibid 282.

<sup>160</sup> This is demonstrated in Annexe B with states who emit emissions below 0.09%.

<sup>161</sup> Martin Crook and Damien Short, ‘Marx, Lemkin and the Genocide –Ecocide Nexus’ (2014) *The International Journal of Human Rights* 18, no. 3 (2014): 298– 319.

<sup>162</sup> Levene (n 150) 288.

<sup>163</sup> Ibid 289.

<sup>164</sup> Center for Human Rights and Global Justice, ‘Every Thirty Minutes: Farmer Suicides, Human Rights And The Agrarian Crisis In India’ (NYU School of Law 2011) 1.

agroecological techniques to counter climate change, lower production costs, and increase food production without destroying the environment.<sup>165</sup>

### 3.3.2. Climate Change Triggers War and Violence

Climate change can be described as unfolding as part of “a matrix of causality”.<sup>166</sup> It amplifies existing environmental, social, political and economic challenges and increases the likelihood of competition and conflict over resources.<sup>167</sup> The Genocide-Ecocide Nexus described above inevitably leads to intense inter-group conflict for remaining water, cattle, and land.<sup>168</sup> In 2007 the IPCC warned that climate change could become a significant contributor to conflicts, while the same year, a US government report identified climate change as “the greatest challenge to global stability and security”.<sup>169</sup> Today, the world is witnessing this reality more than ever.

Central Asia and Central America are unravelling into extreme, endemic violent conditions due to climate change.<sup>170</sup> Research has shown that climate change breeds conflict in fertile grounds such as those heavily dependent on agriculture. This is exacerbated by other socioeconomic and political factors, such as low economic development and political marginalization.<sup>171</sup> The image below illustrates the Palmer Drought Severity Index map from 2005 to 2014, showing all states that experienced more than one civil conflict with a death toll of more than 25 deaths per year. This shows a clear correlation between the prevalence of drought and the occurrence of civil war.<sup>172</sup>

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<sup>165</sup> Ibid

<sup>166</sup> Levene (n 150) 288.

<sup>167</sup> ‘The facts: How climate change affects people living in poverty’ (Mercy Corps, 2021) <https://europe.mercycorps.org/en-gb/blog/climate-change-poverty>.

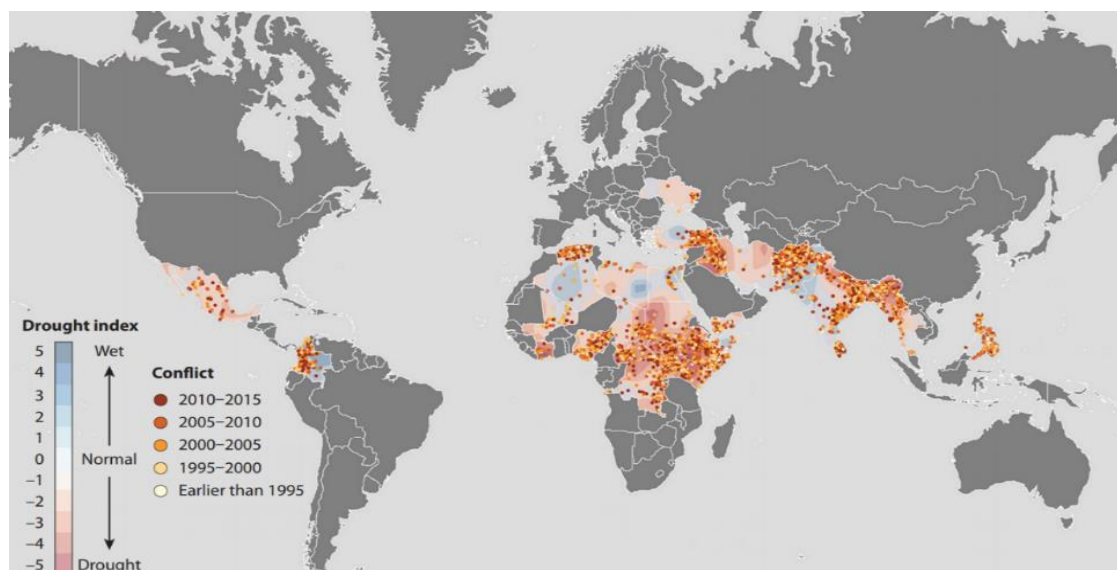
<sup>168</sup> Jürgen Scheffran and others, ‘Violent Climate or Climate of Violence? Concepts and Relations with Focus on Kenya and Sudan’ (2014) 18(3) The International Journal of Human Rights 369–390.

<sup>169</sup> CNA Corporation, ‘National Security and the Threat of Climate Change’ (2007) [https://www.cna.org/cna\\_files/pdf/national%20security%20and%20the%20threat%20of%20climate%20change.pdf](https://www.cna.org/cna_files/pdf/national%20security%20and%20the%20threat%20of%20climate%20change.pdf). 7

<sup>170</sup> Levene (n 150) 288.

<sup>171</sup> Vally Koubi, ‘Climate Change and Conflict’ (2019) 22 Annual Review of Political Science 343.

<sup>172</sup> Ibid 344.



*Koubi (n 171) 345*

### 3.3.3. Climate-Induced Displacement

Both slow-onset effects and sudden onset effects of climate change intensify threats that force people to flee within their country or across international borders, resulting in internal and external displacement.<sup>173</sup> Climate-induced displacement affects millions of children every year, and sudden-onset disasters place them at heightened risk of family separation, orphaning, exploitation, sexual abuse, and trafficking. The surreptitious nature of child trafficking makes it difficult to obtain quantitative, qualitative or empirical data to fully assess the extent to which natural disasters affect their prevalence.<sup>174</sup> However, there are reports of rising cases of trafficking and illegal adoptions alongside the most recent disasters.<sup>175</sup> The CRC Committee notes in its GC No. 20 that “situations of armed conflict and humanitarian disasters result in the breakdown of social norms and family and community support structures”. This can expose adolescents to risks of sexual and gender-based violence, child marriages and child trafficking.<sup>176</sup>

In 2020, 40.5 million new internal displacements were recorded, the highest figure recorded in the past decade.<sup>177</sup> Disasters have remained the leading trigger of new internal displacements globally.<sup>178</sup> The Guiding Principles on Internal Displacement apply to people fleeing due to “natural or man-made

<sup>173</sup> UNHCR, 'Global Trends: Forced Displacement In 2019' (UNHCR 2020) 16.

<sup>174</sup> Najat Maalla M'jid, Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, UN Human Rights Council A/HRC/19/63, 21<sup>st</sup> December 2011, para 27-31.

<sup>175</sup> Gibbons (n 97) 22.

<sup>176</sup> A/HRC/19/63 (n 174) para 79.

<sup>177</sup> Kate Whiting, 'The Number of Internally Displaced People Reached a Record High in 2020' (*World Economic Forum*, 2021) <https://www.weforum.org/agenda/2021/05/internal-displacement-disaster-conflict-climate-change>.

<sup>178</sup> See Annexes E to I for a detailed analysis of internal displacements in the first half of 2020 in every region of the world as a result of disasters and violence.

disasters".<sup>179</sup> Internally Displaced Peoples (IDP) have the right "to receive protection and humanitarian assistance" from their government.<sup>180</sup> Slow-onset processes such as droughts or sea-level rise can prove to be more detrimental than a single storm.<sup>181</sup>

In annexes E to I, five tables have been created, which are separated by regions. These tables identify the prevalence of internal displacement from January 2020 – June 2020 based on data from the Displacement Monitoring Centre and other sources such as websites and reports. These tables demonstrate the triggers of internal displacement such as disasters, war, and violence and the impact this is having on millions of people worldwide to give a clearer picture of the migration issue resulting from climate change.

### **3.4. The Inadequacy of the CRC's Legal Framework in Protecting "Child Climate Refugees" in Light of Present-Day Conditions**

[W]e need to understand the unique dignity of every human person and strengthen the conviction that we are one single human family. So, we must not in these times reject, in particular, those who are escaping from persecution, war or climatic disasters. The numbers may be intimidating, but we have no right to reject them. We have no right to do anything other than be hospitable.

**Peter Sutherland, 2015<sup>182</sup>**

#### **3.4.1. Child Climate Refugees Protection Under the CRC**

Catastrophic hurricanes, melting glaciers and unfurling wildfires are some of the most distinguishable signs of a changing climate. Nevertheless, another critical and often overlooked sign is that of 'forced migration'. It is estimated that by the year 2050, there could be between 25 million to 1 billion climate refugees due to gradual yet pervasive environmental impacts and natural disasters.<sup>183</sup> Children are disproportionately affected by man-made disasters, with around 500 million children living in high-risk flooding areas and nearly 160 million children living in areas of an extreme or high risk of drought.<sup>184</sup> Yet, despite these statistics, children have been almost entirely overlooked in the emerging research,

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<sup>179</sup> Principle 2, U.N. Doc. E/CN.4/1998/53/Add.2 (1998).

<sup>180</sup> Ibid principles 3(2) and 25(2).

<sup>181</sup> Meg Black, 'Fleeing Climate Change' (UNICEF USA, 2019) <https://www.unicefusa.org/stories/fleeing-climate-change/35277>.

<sup>182</sup> Peter Sutherland, 'Migration - The Global Challenge of Our Times' (RTÉ Radio Centre Dublin, 2015).

<sup>183</sup> Francesco Bassetti, 'Environmental Migrants: Up to One Billion by 2050' (*Foresight - The CMCC Observatory on Climate Policies and Futures*, 2019) <https://www.climateforesight.eu/migrations-inequalities/environmental-migrants-up-to-1-billion-by-2050/>.

<sup>184</sup> Ibid.

debates and policies established to mitigate this crisis.<sup>185</sup> Article 22 CRC is the most fundamental provision offering protection to all children seeking refugee status. This provision offers children “appropriate protection and humanitarian assistance”. This includes the right to health, education, and housing.<sup>186</sup> These detailed international children’s rights provisions provide a comprehensive framework in protecting child refugees. However, this does not always translate effectively into adequate implementation. The CRC’s broad jurisdictional scope and content underscore both its strengths and weaknesses.<sup>187</sup> Unless states start implementing the CRC’s principles into their domestic immigration laws, many environmental refugees are not offered refugee status. Furthermore, the absence of an agreed definition of a ‘climate refugee’ inevitably deprives children of their fundamental rights.<sup>188</sup>

### 3.4.2. Unclear Definition Under the 1951 Refugee Convention

Today, there is no consensus among states in establishing a single binding instrument to protect environmental refugees.<sup>189</sup> The term ‘climate refugee’ does not exist in environmental law.<sup>190</sup> Climate change has been the most challenging obstacle facing the global refugee crisis since the Second World War.<sup>191</sup> The 1951 Convention defines a “refugee” as a person who has crossed an international border “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”.<sup>192</sup> It must be proven that this persecution occurred on one of the five grounds mentioned in article 1(A)(2) of the 1951 Convention. Child climate refugees do not fall within this narrowly constructed provision. Climate change has already propelled and is expected to drive a mass movement exodus within the coming years.<sup>193</sup> Environmental refugees should have the right to form a concrete social group.<sup>194</sup>

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<sup>185</sup> 'Climate Mobility and Children' (*Unicef.org*, 2020) <https://www.unicef.org/globalinsight/climate-mobility-and-children>.

<sup>186</sup> article 38 and 39 CRC.

<sup>187</sup> Kathryn Hollingsworth, 'The utility and futility of international standards for children in conflict with the law: The case of England', *Routledge International Handbook of Criminology and Human Rights* (Routledge 2016) 190.

<sup>188</sup> UNHCR, 'Climate Change and Disaster Displacement' (*unhcr.org*, 2015) <http://www.unhcr.org/climate-change-and-disasters.html>.

<sup>189</sup> International Organization for Migration, 'IOM Outlook on Migration, Environment and Climate Change' 27.

<sup>190</sup> UNHCR 2015 (n 188).

<sup>191</sup> Stellina Jolly and Nafees Ahmed, 'Climate Refugees Under International Climate Law and International Refugee Law: [2015] ISIL Yearbook of International Humanitarian and Refugee Law 217.

<sup>192</sup> article 1(A)(2) 1951 Convention.

<sup>193</sup> Jolly (n 191) 21.

<sup>194</sup> Nicole de Moor, 'International Migration and Environmental Change: Legal Frameworks for International Adaptive Migration' (PhD, Ghent University 2014) 65.

States are directly responsible for contributing to these life-threatening conditions due to wealthier states continued negligence and inaction.<sup>195</sup> The UNHCR conducted a study in 1953, which held that those fleeing natural disasters were not entitled to refugee protection under the 1951 Convention. The UNHCR held that the events causing displacement must “derive from the relations between the State and its nationals”.<sup>196</sup> It has become increasingly apparent that refugee law was drafted to recognize that natural disasters are a significant driver of migration. However, the law was deliberately drafted as not to extend this status to victims of such events. The level of harm inflicted on children following natural disasters, flooding, droughts, and wildfires undoubtedly reaches the threshold of persecution required to be offered protection under the CRC and the 1951 Convention. Both of these Conventions should be interpreted as ‘living instruments’ in light of present-day conditions. However, there is a lacuna in both Conventions that fails to protect climate refugees.

### **3.4.3. *Teitiota* – I-Kiribati Children Paving the Way for Climate Refugees and Non-Refoulement Obligations of States**

#### **3.4.3.1. Facts of the Case**

*Teitiota v New Zealand* was a landmark case that revolved around the I-Kiribati families' precarious lives and their fear of being deported back to a small Pacific island engulfed by climate change. This case raised the critical question of what happens when a state can no longer protect a child's right to health or right to life due to climate change? This case serves as a valuable precedent for children's rights in the context of climate-induced migration and could be a potential future communication lodged before OPIC.

The Teitiota family were I-Kiribati citizens who moved to New Zealand in 2007. They subsequently had three children, who were born in New Zealand but not entitled to citizenship.<sup>197</sup> Teitiota worked seven days a week as a vegetable farmer on the outskirts of Auckland. In 2010, Teitiota wished to extend his work visa and hired an attorney to file an extension application. Unfortunately, the lawyer was incompetent in lodging this request, missed several vital deadlines and without cash payments to cover his legal fees, the lawyer seized the families passports and visas. In desperation, Teitiota hired a second lawyer, Dr Michael Kidd, who viewed Teitiota as a victim of growing global inequality where a more significant humanitarian issue needed to be addressed.<sup>198</sup>

Teitiota painted a compelling picture of how saltwater was contaminating the fresh water supply, and inhabitable land had begun eroding in Kiribati. Floodwaters were poisoning coconut trees and

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<sup>195</sup> Jenahee Hong, 'Refugees of the 21st Century: Environmental Injustice' (2001) 10 Cornell Journal of Law and Public Policy 332.

<sup>196</sup> Ibid 332. Jacques Vernant, 'The Refugee in the Post-War World' (1953) 294 Yale University Press; The (ii) section stated that this "excludes victims of natural disasters from the definition of the refugee known to international law" (para 5).

<sup>197</sup> Kelly Buchanan, 'New Zealand: "Climate Change Refugee" Case Overview' (The Law Library of Congress - Global Legal Research Centre 2015).

<sup>198</sup> Kenneth R. Weiss, 'The Making of a Climate Refugee' (*Foreign Policy*, 2015) <https://foreignpolicy.com/2015/01/28/the-making-of-a-climate-refugee-kiribati-tarawa-teitiota/> 2.

swamping houses, accompanied by increased mortality rates, land disputes, and a housing crisis.<sup>199</sup> These combined factors exacerbated violence, and the island was only expected to survive another decade or so longer.<sup>200</sup> Kidd appealed to the authorities in New Zealand to offer Teitiota protection under the 1951 Convention and argued that their family faced indirect persecution from human-caused global warming.<sup>201</sup>

### 3.4.3.2. Courts Assessment

#### A. International Protection Tribunal (IPT) <sup>202</sup>

Teitiota claimed refugee status based on “changes to his environment in Kiribati caused by sea-level rise associated with climate change”.<sup>203</sup> The refugee protection officer refused to grant refugee status to Teitiota. This decision was upheld by the IPT, which considered that Teitiota had undertaken voluntary adaptive migration rather than forced migration.<sup>204</sup> The IPT did not exclude the possibility that environmental degradation could “create pathways into the Refugee Convention”.<sup>205</sup> The principle of *non-refoulement*, stipulated under article 33 of the 1951 Convention, protects individuals from being sent back to territories where their life or freedom would be threatened.<sup>206</sup> The IPT found that Teitiota had not demonstrated that the environmental conditions he faced were so “parlous that his life will be placed in jeopardy.”<sup>207</sup> Moreover, the IPT held there was no evidence to substantiate that Teitiota had no access to potable water or that the conditions he faced upon return were so perilous that they risked his life.<sup>208</sup>

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<sup>199</sup> Weiss (n 198) 2.

<sup>200</sup> *Teitiota v. New Zealand* [2020] CCPR/C/127/D2728/2016 para 2.1 and 7.2.

<sup>201</sup> Weiss (n 198) 2.

<sup>202</sup> *Ibid.*

<sup>203</sup> AF (Kiribati) [2013] NZIPT 800413 para 2.

<sup>204</sup> *Ibid* 49.

<sup>205</sup> *Ibid* 55.

<sup>206</sup> De Moor (n 194) 66 and 67.

<sup>207</sup> AF (Kiribati) [2013] NZIPT 800413 para 74.

<sup>208</sup> *Ibid* 73.



## **B. High Court<sup>209</sup> & Court of Appeal<sup>210</sup>**

Teitiota's application was declined by both the High Court and Court of Appeal in 2013 and 2014. Both of these bodies ruled that it was not their place to expand the scope of the 1951 Convention to cover those displaced by climate change.<sup>211</sup>

## **C. Supreme Court<sup>212</sup>**

Surprisingly, it was not until this case reached the Supreme Court that the lawyer decided to expand its scope to include Teitiota's children in one unified appeal.<sup>213</sup> From a children's rights perspective, this was important as both the right to health and right to life were used in the litigation. The applicant submitted additional evidence to the Supreme Court referring to the IPCC Fifth Assessment Report. This report warned that rising sea levels present a very high risk for low-lying coastal areas and atoll islands like Kiribati.<sup>214</sup> Despite this compelling evidence and the use of children in the courts, in July 2015, the Supreme Court dismissed Teitiota's appeal.

## **D. Human Rights Committee (HRC)<sup>215</sup>**

After exhausting all domestic remedies, this case was then referred to the HRC, which considered whether forcibly sending a person back to a place where the effects of climate change are life-threatening could constitute an arbitrary deprivation of life under article 6 ICCPR. The HRC's response has significant implications for child climate refugees who may in the future refer to the CRC Committee for similar guidance. As described earlier, article 6 ICCPR and article 6 CRC are closely linked to each other.

In response to this question, the HRC noted that the risk must be personal and cannot be based merely on the general conditions in the receiving state.<sup>216</sup> The HRC recalled that "environmental degradation, climate change and unsustainable development constitute some of the most severe and pressing threats to the ability of present and future generations to enjoy the right to life".<sup>217</sup> The HRC

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<sup>209</sup> *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2013] NZHC 3125 (26 November 2013).

<sup>210</sup> *Teitiota v. New Zealand* [2014] NZCA 173.

<sup>211</sup> Weiss (n 198) 2.

<sup>212</sup> *Teitiota v. New Zealand* [2015] NZSC 107.

<sup>213</sup> Weiss (n 198) 2.

<sup>214</sup> IPCC, 'Climate Change 2014: Synthesis Report. Contribution Of Working Groups I, II And III To The Fifth Assessment Report Of The IPCC' (Switzerland 2015) 13.

<sup>215</sup> CCPR/C/127/D2728/2016.

<sup>216</sup> CCPR/C/127/D2728/2016 para 9.4.

<sup>217</sup> Ibid 9.4.

held that given the 10 to 15-year timeframe left for the survival of Kiribati, there was sufficient time for the state to step in and protect its citizens.<sup>218</sup>

Two Committee members dissented to the judgement. One member criticized the majority's reliance on the lack of evidence that the family had no access to potable water, noting that "potable" does not translate to "safe drinking water."<sup>219</sup> Another member argued that the HRC placed an "unreasonable burden of proof" in meeting the threshold of a real risk of danger of arbitrary deprivation of life.<sup>220</sup>

### 3.4.3.3. Significance of the Case and its Limitations

There could be 2.2 million people displaced from small island nations by the end of the century as a result of climate change.<sup>221</sup> This case demonstrates how the 1951 Convention is inadequate in protecting child climate refugees, or environmental refugees in general, in light of present-day conditions. Both Kiribati and New Zealand have ratified the CRC and the 1951 Conventions, yet children are offered no protection when fleeing for environmental reasons.<sup>222</sup>

Teitiota's lawyer, Mr Kidd, quoted that "whether you roast someone slowly or throw them in the fire, the end result is the same: Death is death."<sup>223</sup> It is a shame that children born in New Zealand are forced to return to a sinking island with few prospects for a happy future. The is a place where children's right to health, adequate water, sanitation, and hygiene are directly threatened. Climate-induced food insecurities have led to vitamin A deficiencies and malnutrition, affecting 60% of children below ten years of age.<sup>224</sup> Moreover, since being deported back to Kiribati, Teitiota claimed his family experienced substantial health issues. One child suffered from severe blood poisoning, causing boils to form all over his body, and the family could not grow crops to sustain a livelihood. However, it is also important to consider that granting asylum in this case would establish a legal precedent for a proliferation of asylum cases globally. This would open up the doors to billions facing economic deprivation, consequences of natural disasters or climate-related catastrophes, demonstrating the complexity of this issue.<sup>225</sup>

Unfortunately, Pacific islands like Kiribati are likely to be rendered uninhabitable due to seawater intrusion and contaminated water supply long before they are eradicated beneath the waves, ultimately rendering their entire population stateless.<sup>226</sup> Unless the CRC Committee and other HRTB's

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<sup>218</sup> 'UN HRC, Adopted on Teitiota Communication - Climate Change Litigation' (*Climate Change Litigation*, 2015) <http://climatecasechart.com/non-us-case/un-human-rights-committee-views-adopted-on-teitiota-communication/>.

<sup>219</sup> Committee member Vasilka Sancin dissent CCPR/C/127/D2728/2016 para 3.

<sup>220</sup> Committee member Duncan Laki Muhumuza dissent CCPR/C/127/D2728/2016 para 1.

<sup>221</sup> Weiss (n 198) 4.

<sup>222</sup> IOM, 'Migration and Climate Change', (IOM 2008) 11.

<sup>223</sup> Weiss (n 198) 6.

<sup>224</sup> Burkard (n 73) 30.

<sup>225</sup> Weiss (n 198) 2.

<sup>226</sup> Ibid 3.

address this lacuna, in the future, Pacific islanders will end up in fenced refugee camps due to industrial states continued economic exploitation.

Although this case was unsuccessful, this ruling was the first time the HRC held that forcibly returning a person to a place where their life would be at risk due to climate change may violate the right to life under article 6 ICCPR. This case is a significant jurisprudential development for the protection and recognition of climate refugees. However, the high threshold needed to invoke *non-refoulement* obligations highlights how the legal framework provides insufficient protection.<sup>227</sup> If the impacts of climate change in Kiribati do not meet this threshold, it is not easy to think of a situation that would.<sup>228</sup>

### 3.5. Conclusion

The primary focus of this chapter has been to evaluate the extent to which the CRC's legal framework protects children's right to life in the face of climate change.

The CRC's COs were examined, and it was found that the CRC Committee rarely mentions climate change or environmental matters in association with article 6 within reporting.<sup>229</sup> It is far more likely that this will be covered under the right to health or the business sector clusters as demonstrated in chapter 2.

Section 3.3. highlighted the numerous ways in which climate change impacts children's right to life. This chapter presents the Genocide-Ecocide Nexus, which severely impacts indigenous children's right to health, life, and culture. In addition, this crisis is triggering war and violence in many regions globally.

It is estimated that there could be up to 1 billion climate refugees by 2050. Therefore, this chapter highlights the lacuna within the 1951 Convention, which does not provide climate refugees protection. Thus, despite the CRC providing protection, the provisions are not enforceable in this context. The CRC provisions do not always translate into effective implementation as states national immigration laws and the 1951 Convention prevail. As a result, this chapter submits that the definition of a refugee needs to be reformed in light of present-day conditions as both Conventions should be seen as 'living instruments'.

Furthermore, the case of *Teitiota* illustrated the nexus between children's right to life and climate change. Although the CRC was not invoked during these court proceedings, this case informs us of how climate refugees are treated within the international arena and the threshold expected for invoking *non-refoulement* obligations. New Zealand has ratified the CRC, and despite obligations to

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<sup>227</sup> Urshila Pandit, 'An Analysis of *Ioane Teitiota v New Zealand: Paving the Way For Climate Refugees and Non Refoulement Obligations of States Under Article*

6 ICCPR' (*NUALS Law Journal*, 2020) <https://nualslawjournal.com/2020/05/01/an-analysis-of-ioane-teitiota-v-new-zealand-paving-the-way-for-climate-refugees-and-non-refoulement-obligations-of-states-under-article -6-of-the-iccpr/>.

<sup>228</sup> Adaena Sinclair-Blakemore, 'Teitiota v New Zealand: A Step Forward in the Protection of Climate Refugees Under International Human Rights Law?' (*OHRH*, 2020) <https://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law/>.

<sup>229</sup> See trend in Annexe C.

protect children's right to health and right to life, the children, in this case, we're forced to return to an island that is inevitably sinking into the Pacific with little chance of survival. *Teitiota* highlighted a lacuna within the 1951 Convention and within the CRC itself as three young children were forcibly returned to a climate-stricken island.

## Chapter 4

### A Proliferation of Child Climate Litigation

#### 4.1. Introduction

Between 1986 and May 2020, there have been 1,587 climate litigation cases initiated worldwide.<sup>230</sup> There were 1,213 cases identified in the United States and 374 cases across 36 other states and eight regional and international jurisdictions.<sup>231</sup> A report from May 2019 to May 2020 showed climate litigation cases filed across six continents. Over 80% of these cases have been brought against governments outside the US, primarily by corporations or individuals.<sup>232</sup> For the first time in history, there has been rapidly developing jurisprudence in the Global South, contributing to innovative ways for transnational climate governance.<sup>233</sup> The table below shows the number of climate cases initiated per state between 1986 and May 2020.<sup>234</sup>

Argentina	1	Australia	98	Austria	2
Belgium	1	Brazil	6	Canada	22
Chile	2	Colombia	2	Czech Republic	1
Ecuador	1	Estonia	1	European Union	57
France	11	Germany	6	International Court of Justice	1
India	9	Indonesia	1	Inter-American Court and Commission on Human Rights	3
Ireland	4	Japan	3	Kenya	1
Luxembourg	1	Mexico	1	Netherlands	2
New Zealand	18	Nigeria	1	Norway	1
OECD	6	Pakistan	4	Peru	1
Philippines	2	Poland	3	South Korea	1
South Africa	4	Spain	13	Sweden	1
Switzerland	2	Uganda	1	Ukraine	2
UN Committee on the Rights of the Child	1	UN Human Rights Committee	2	UN Framework Convention on Climate Change	10
United Kingdom	62	UN Special Rapporteurs	2	United States	1,213

*Geographical distribution of 1,587 cases worldwide (374 cases outside the United States)*

**Setzer (n 240) 6**

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<sup>230</sup> Ibid 4.

<sup>231</sup> Ibid 3; other countries data collected by the Sabin Center for Climate Change Law at Columbia University between 1986 and May 2020: Australia (98 cases), UK (62 cases), other EU bodies and courts (57 cases).

<sup>232</sup> Joana Setzer Rebecca Byrnes, 'Global trends in climate change litigation: 2020 snapshot' (The Grantham Research Institute on Climate Change and the Environment and the Centre for Climate Change Economics and Policy 2020) 1.

<sup>233</sup> Ibid 14.

<sup>234</sup> Setzer (n 232) 6.

Although the focus of this thesis is on the CRC's legal framework, climate jurisprudence from other HRTB's and national level courts serve as an essential vehicle for change and a valuable precedent for future litigation. This chapter aims to examine the recent surge in climate litigation globally and how children's rights are being used as a tool for achieving climate action. In the previous two chapters, the right to health and the right to life were explored in the context of climate change. Thus, this chapter will examine how these two provisions can be invoked through litigation to drive behavioural change for key actors, advance climate policies, and encourage public debate.<sup>235</sup> This litigation can be considered as a 'governance mechanism' in combatting climate change.<sup>236</sup>

This chapter will examine the pending landmark case of *Sacchi et al.* and the effectiveness of OPIC in providing remedies for child rights violations in the context of climate change. Other critical jurisprudence such as *Julianna v US.*, *Agostinho v. Portugal and 32 Other States*, *Kim Yujin et al. v South Korea*, *the Peoples Climate Case*, among others, will be briefly touched upon. These cases demonstrate how human rights can be used to achieve climate justice and how the right to health and right to life are essential frameworks in mitigating climate change.

## 4.2. Recent Trends and Drivers Behind Climate Litigation

### 4.2.1. Worldwide Climate Protests & Movements

At the 2016 CRC Day of General Discussions (DGD) on the environment, climate change and children's rights were inadequately discussed. This DGD did not gather the momentum undoubtedly required to address this crisis. However, the DGD did serve as a catalyst for the CRC Committee to increase its long-overdue focus on climate change and children's rights. Jaffé describes how the Committee was left flat-footed when children worldwide explosively and persuasively elevated the climate crisis into a global protest.<sup>237</sup> This can be seen through the pivotal role children have played in climate movements, such as Zero Hour<sup>238</sup> the Sunrise Movement<sup>239</sup>, Alexandria Villaseñor's Earth Uprising<sup>240</sup> and Greta Thunberg's Fridays for the Future.<sup>241</sup>

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<sup>235</sup> Ibid 4.

<sup>236</sup> Ibid 3

<sup>237</sup> Philip D. Jaffé, 'Promoting and defending child rights will help us all stay alive!' (15<sup>th</sup> April 2021) <https://www.childenvironment.org/blog/child-rights-will-help-us-all-stay-alive>.

<sup>238</sup> [www.thisiszerohour.org](http://www.thisiszerohour.org).

<sup>239</sup> [www.sunrisemovement.org](http://www.sunrisemovement.org).

<sup>240</sup> [www.earthuprising.com](http://www.earthuprising.com).

<sup>241</sup> [www.fridaysforfuture.com](http://www.fridaysforfuture.com).

#### 4.2.2. Litigation Against the 'Carbon Majors'

Recently, various strategies have been employed against the major fossil fuel companies known as the 'Carbon Majors'.<sup>242</sup> This can be illustrated in the recent case of *Milieudefensie et al. v Royal Dutch Shell (RDS)*.<sup>243</sup> A Dutch court issued a landmark ruling in May 2021 ordering the oil giant Shell to reduce its emissions by 45% by 2030. This was the first time in history that a corporation was held accountable for its contribution to climate change, setting a valuable precedent for future litigation. This case incontestably represents a significant step forward in the ongoing paradigm shift against 'business as usual' towards a higher degree of corporate accountability and recognition for human rights and climate change. RDS is the world's 9<sup>th</sup> highest emitting corporation from 1988 to 2015. RDS is currently emitting nine times as much CO<sub>2</sub> as the entire Netherlands put together.<sup>244</sup>

The ruling urges RDS to comply with the PCA targets. Noteworthy is how this case places responsibility on RDS to prevent human rights impacts linked to climate change beyond the perimeter of the companies' own activities and beyond national borders. This represents the complete global value change set down by the UN Guiding Principles on Business and Human Rights.<sup>245</sup> This is significant as it implies extra-territorial obligations for RDS.<sup>246</sup> This case invoked the right to life and the right to private and family life.<sup>247</sup> It is also held that the impacts of climate change manifest through health problems in Dutch residents such as heat stress, increasing infectious diseases, air pollution, and UV exposure. The Dutch court held that *Milieudefensie et al.* could not directly invoke human rights regarding RDS. However,

[D]ue to the fundamental interest of human rights and the value for society as a whole they embody, the human rights may play a role in the relationship between *Milieudefensie et al.* and RDS. Therefore, the court will factor in the human rights and the values they embody in its interpretation of the unwritten standard of care.<sup>248</sup>

#### 4.3. OPIC As a Tool in Protecting Children's Rights

OPIC came into force on the 14<sup>th</sup> of April 2011 and is intended to serve as a vehicle to strengthen international justice for children in finding remedies for the violations of their rights. OPIC is a logical

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<sup>242</sup> Setzer (n 232) 1.

<sup>243</sup> *Milieudefensie et al v Royal Dutch Shell*, The Hague District Court , 26<sup>th</sup> May 2021, C/09/571932/HA ZA 19-379 (English version).

<sup>244</sup> Shell ordered to slash CO<sub>2</sub> emissions throughout its global value chain' (*corporatejustice.org*, 2021) [https://corporatejustice.org/news/landmark-ruling-shell-ordered-to-slash-CO<sub>2</sub>-emissions-throughout-its-global-value-chain/](https://corporatejustice.org/news/landmark-ruling-shell-ordered-to-slash-CO2-emissions-throughout-its-global-value-chain/).

<sup>245</sup> UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Resolution 17/4 (16 June 2011).

<sup>246</sup> *Milieudefensie et al.* (n 243) para 4.4.18.

<sup>247</sup> Ibid para 4.4.9; translates to article 2 and 8 ECHR; article 16 and 17 ICCPR; article 6 and 24 CRC.

<sup>248</sup> Ibid 4.4.9.

and necessary outcome of recognizing children's right to be heard embodied under article 12 CRC and is crucial in circumstances where domestic remedies are grossly inadequate or absent.<sup>249</sup> This mechanism allows the CRC Committee to proactively make enquiries into state actions and review systemic violations of children's rights. It is necessary to examine the effectiveness of OPIC to assess the adequacy of the CRC's legal framework in protecting children's rights in the context of climate change. The case of *Sacchi* will be examined to demonstrate how the process of lodging a complaint under OPIC works and its limitations in protecting the right to health and the right to life in the context of climate change.

Article 12 CRC provides children with the right to express their views freely in all matters affecting them, with those views being "given due weight". This promotes the conception that a child should be viewed as an active participant in promoting, protecting, and monitoring their rights.<sup>250</sup> The CRC Committee underscores how this applies equally to all measures adopted by states in implementing the CRC, inclusive of OPIC.<sup>251</sup> As of July 2021, seven years since the entry into force of OPIC, 47 states have ratified, and 17 have signed but not yet ratified, and 133 have taken no action.<sup>252</sup> This illustrates a slow ratification uptake and a limitation on OPIC's geographical reach. Children must rely on their states to ratify OPIC to access this mechanism.

Furthermore, a plaintiff must have exhausted all national mechanisms, which proves very difficult for children, as will be illustrated in the case of *Sacchi*. While the Committee can issue recommendations to states, these are not legally binding. Therefore, the CRC Committee relies on states to ensure that recommendations are implemented and effective redress measures are offered to victims.<sup>253</sup>

Another criticism of OPIC is that it does not have a formal mechanism to hear a communication in person. As a result, children are never physically heard and can only communicate through their representatives within the written communication undermining the true vision of article 12 CRC.

#### 4.4. The PCA & the UNFCCC

The PCA and the UNFCCC are explained briefly in this section as they are two complementary international frameworks often used in climate litigation cases to prove that states are not fulfilling their international obligations.

The 2015 PCA was established with the explicit intent that states would finally take adequate steps to address the climate crisis and limit global warming to below 2°C but ideally 1.5°C degree Celsius pre-industrial levels. States were required to establish a National Determined Contribution reflecting their highest possible ambition to reduce emissions. However, scientists have stated that these

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<sup>249</sup> Sonja C. Grover, *Children Defending Their Human Rights Under The CRC's Communications Procedure* (Springer 2015) 3.

<sup>250</sup> *Ibid* 5.

<sup>251</sup> CRC/GC/2003/5 para 4.

<sup>252</sup> <https://opic.childrightsconnect.org/ratification-status/>.

<sup>253</sup> Becky Randel, 'The 3<sup>rd</sup> Optional Protocol to the CRC: A Step Forward in Improving Access to Justice for Children - Penal Reform International' (*Penal Reform International*, 2014) <https://www.penalreform.org/blog/3rd-optional-protocol-crc-step-improving-access-justice/>.



commitments are insufficient, and we would need to do five times more than this to make a difference.<sup>254</sup> States have not managed to fulfil their obligations under the PCA. The UN Environment Programme stated that even if states fulfilled their commitments under the PCA, average global temperatures would still rise to 3-4°C by 2100.<sup>255</sup> It is estimated that 75% of states pledges are partially or totally insufficient in the ultimate goal of reducing emissions by 50% by 2030.

Furthermore, there is uncertainty in defining states exact obligations under the PCA. Between 2015 and May 2020, there have been 36 lawsuits filed against states and one investigation against corporations for alleged human rights violations.<sup>256</sup> The failure of the PCA has been a contributor to the increased climate litigation proliferating across the world as individuals are now turning to legal action as states have not shown willingness to keep their commitments.<sup>257</sup>

The main objective of the UNFCCC<sup>258</sup> is to “stabilize GHG in the atmosphere at a level that would prevent anthropogenic interference with the climate system.”.<sup>259</sup> The UNFCCC does not contain specific provisions concerning children. However, article 3 ensures that states “should protect the climate system for the benefit of present and future generations of humankind, based on equity and following their “common but differentiated responsibilities”. Thus, children’s rights are encompassed in the foundational principle of inter-generational and intra-generational equity.<sup>260</sup> However, states are not fulfilling their obligations under the UNFCCC.

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<sup>254</sup> Zoya Teirstein, 'Paris Agreement Targets Need to be Five Times Stronger to Actually Work' <https://grist.org/article/paris-agreement-targets-need-to-be-5-times-stronger-to-actually-work/>

<sup>255</sup> John H. Knox and Christina Voigt, 'Introduction to the Symposium on Jacqueline Peel & Jolene Lin, “Transnational Climate Litigation: The Contribution of the Global South”' (2020) 114 American Journal of International Law.

<sup>256</sup> César Rodríguez-Garavito, 'Human Rights: The Global South's Route To Climate Litigation' (2020) 114 American Journal of International Law 40-44; These cases were filed in 23 national jurisdictions, two regional and three global judicial or quasi-judicial bodies.

<sup>257</sup> Jacqueline Peel and Jolene Lin, 'Transnational Climate Litigation: The Contribution Of The Global South' (2019) 113 American Journal of International Law.

<sup>258</sup> A/RES/48/189.

<sup>259</sup> 'What is the United Nations Framework Convention on Climate Change?' (*Unfccc.int*) <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change>. accessed 9 March 2021.

<sup>260</sup> Ruppel-Schlichting (n 20) 365.

## 4.5. *Sacchi et al.* - The Baptism of Fire

### 4.5.1. The Pending Admissibility Case of *Sacchi*

On the 23<sup>rd</sup> of September 2019, the same day as the UN Climate Action Summit 2019, 16 children across 12 different states initiated the first climate case before the CRC Committee.<sup>261</sup> Greta Thunberg, a 16-year-old climate activist, was among the petitioners.<sup>262</sup> The children claimed that states' inaction regarding climate change amounted to a violation of their rights under the CRC, namely their right to health (article 24), right to life (article 6), indigenous children's rights to culture (article 30) and the children's best interests (article 3(1)). The five respondent states are Argentina, Brazil, Germany, France and Turkey. These states were chosen because they have all ratified OPIC, under which this petition was brought.<sup>263</sup> These states have also ratified the UNFCCC and have ratified (or, in the case of Turkey, signed) the 2015 PCA. Furthermore, all states have significantly contributed to global CO<sub>2</sub> emissions.<sup>264</sup> The graph below demonstrates the projected emissions for the respondent states and other high emitting states such as the US, China and India, who have not yet signed OPIC.

Table 1: Overview of current and projected emissions per country or country group, as well as corresponding emission levels in 2030 consistent with limiting global warming to below 1.5°C or 2°C			
[Unit]	% share of globe in 2016	Implied warming by 2100 if whole world implements comparable emissions reductions†	
	%	Following current policy	Following NDCs‡
Argentina	0.8%	exceeding 4°C	below 4°C
Brazil	2.3%	below 3°C	below 3°C
China	26.3%	below 4°C	below 4°C
France#	1.0%	below 4°C	below 4°C
Germany*	1.9%	below 4°C	below 3°C
India	7.3%	below 2°C	below 2°C
Turkey	1.1%	exceeding 4°C	exceeding 4°C
United States*	13.5%	exceeding 4°C	exceeding 4°C
European Union	9.4%	below 3°C	below 3°C
G20 (incl. EU)	84.0%	NR	NR
Marshall Islands	0.0%	NR	NR
Global	100.0%	See Table 2	See Table 2

*Table 1: Excerpt from Rogelj Report Table 1*

*Sacchi et al.* (n 25) para 211.1

*Sacchi* has been described as a 'baptism of fire' as it is the CRC Committee's first opportunity to consider the scope of children's rights in the context of climate change. This case will determine the

<sup>261</sup> Ingrid Gubbay and Claus Wenzler 'Chapter 15: Intergenerational Climate Change Litigation: The First Climate Communication to the UN Committee on the Rights of the Child', *Climate Change Litigation: Global Perspectives* (Brill - Nijhoff 2021) 343.

<sup>262</sup> Christine Bakker, 'Baptism of fire?' The first climate case before the UN Committee on the Rights of the Child' (2021) 5 Questions of International Law Journal.

<sup>263</sup> A/HRC/RES/17/18.

<sup>264</sup> Bakker, 'Baptism of fire?' (n 262) 8.

accessibility and effectiveness of OPIC.<sup>265</sup> The CRC has been regarded as a ‘living instrument’, whose interpretation develops over time and in light of present-day conditions.<sup>266</sup> This is a defining moment and opportunity to see if this doctrine will be realized. *Sacchi* raises the quintessential question of whether the CRC’s legal framework can provide a remedy to the all-encompassing challenges of climate change.

#### 4.5.2. *Sacchi* Invokes the Right to Health and Right to Life Under the CRC

The climate crisis is already physically harming children worldwide, posing an imminent and foreseeable threat to their lives.<sup>267</sup> For example, the Paradise wildfires have caused one of the petitioner’s asthma to dangerously flare up, requiring hospitalization. In Lagos, heat-related pollution has hospitalized another petitioner as a result of asthma attacks.<sup>268</sup> In addition, the spread and intensification of vector-borne diseases are dangerously impacting other petitioners’ health through malaria, dengue fever, and new diseases such as chikungunya.<sup>269</sup> The petitioners also mention health concerns such as heat stroke, hyperthermia and exhaustion increasing in frequency.<sup>270</sup> Furthermore, the petitioners claim that the respondent states, by “recklessly causing and perpetuating life-threatening climate change”, have failed to take necessary preventive and precautionary measures to guarantee the children’s right to health and right to life.<sup>271</sup>

#### 4.5.3. Obstacles Standing in The Way of the Success of *Sacchi*

- The standing or ‘*locus standi*’ of the applicants before the relevant forum,
- jurisdiction of the court or monitoring body, and
- the exhaustion of local remedies before a complaint can be brought before a regional or international human rights body.

##### 4.5.3.1 The *Locus Standi* of the Applicants

For the case to be admissible, the petitioners must establish *locus standi* under article 5(1) OPIC. Firstly, they must prove that they fall within the jurisdiction of the state who are parties to OPIC. Some of the petitioners claim to be within the respondent states’ territorial jurisdiction, but all petitioners claim that they are within the extra-territorial jurisdiction of the respondents.

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<sup>265</sup> Bakker, ‘Baptism of fire?’ (n 262)

<sup>266</sup> CRC Committee, *General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment* (Arts. 19; 28, Para. 2; and 37, *inter alia*), 2 March 2007, CRC/C/GC/8 para 20.

<sup>267</sup> *Sacchi et. al* (n 24) para 278.

<sup>268</sup> *Ibid* 279.

<sup>269</sup> *Ibid* 280; a new disease in the islands as of 2015.

<sup>270</sup> ‘Heat and Health’ (*Who.int*, 2018) <https://www.who.int/news-room/fact-sheets/detail/climate-change-heat-and-health>.

<sup>271</sup> *Ibid* 285.

Secondly, they must have the legal capacity to submit the complaint. Following the OPIC Rules of Procedure, it is confirmed that Communications can be submitted by individuals regardless of whether their legal capacity is recognized.<sup>272</sup> This rule is noteworthy as most states do not recognize the legal capacity of children under the age of 18.<sup>273</sup> *Julianna v US* was declared inadmissible because the plaintiffs lacked standing. Furthermore, in the *Peoples Climate Case*,<sup>274</sup> the General Court of the EU denied standing to ten families and the Saami Youth Association because the applicants had not established *locus standi*. These families sued the European Parliament and European Council due to the EU's insufficient 2030 climate target goals. In these examples, the applicants lacked standing due to reasons innate to climate litigation. This can be a result of the separation of powers in national legal orders.<sup>275</sup>

On the national level, children have been granted *locus standi* before the Court. For example, in the Supreme Court of the Philippines, it was held that the state had an intergenerational responsibility to leading a safe and clean environment for future generations to come.<sup>276</sup> Similarly, the Colombian Supreme Court in April 2018 held that children's fundamental rights were jeopardized due to deforestation and climate change. The Court ordered the government to implement action plans to combat deforestation based on the relationship between fundamental rights and the environment and the notion of intergenerational equity.<sup>277</sup> In addition, the court recognized the Colombian Amazon as a 'subject of rights'. These two case examples were positive outcomes but not all child climate litigants are as lucky to be granted *locus standi*.

#### 4.5.3.2. Extra-territorial Obligations and Jurisdiction Arising Under the CRC

Brazil, France and Germany claim that the applicants are not within their jurisdiction or extra-territorial jurisdiction in accordance with article 2(1) CRC and article 5 OPIC.<sup>278</sup> The petitioners argue that HRTBs, such as the CRC, have recognized states extra-territorial obligations to those facing rights violations in a 'direct and foreseeable manner' by activities to which the state controls.<sup>279</sup>

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<sup>272</sup> CRC Committee, *Rules of procedure under OPIC*, (8<sup>th</sup> April 2013) UN Doc CRC/C/62/3 Rule 13.

<sup>273</sup> Bakker, 'Baptism of fire?' (n 262) 9.

<sup>274</sup> Case T-330/18, *Armando Carvalho and Others v The EU Parliament and Council* ('The Peoples' Climate Case') (8 May 2019).

<sup>275</sup> Bakker 'Baptism of fire' (n 262) 10.

<sup>276</sup> *Minors Oposa v Secretary of the Department of Environmental and Natural Resources*, Supreme Court of the Philippines 33 ILM 173, (30<sup>th</sup> July 1993).

<sup>277</sup> Supreme Court of Colombia, *Future Generations v Minister of the Environment* (STC4360-2018, No 11001-22-03-000-2018-00319-01, Judgment of 5 April 2018).

<sup>278</sup> Lack of extraterritorial jurisdiction argument was put forward by Germany and France, but not Brazil.

<sup>279</sup> *Sacchi, et. al. v. Argentina, Brazil, France, Germany and Turkey*, Petitioners' Reply to the Admissibility Objections of Brazil, France, and Germany (CRC Committee, 4th May 2020) para 18; CCPR/C/GC/35 para 63; African Commission on Human and Peoples' Rights, GC No. 3.

The scope of jurisdiction and the nature of state obligations is dependent on the definition provided in the CRC's jurisdictional clause, found under article 2(1) and the CRC Committee's interpretation of this. The notion of extra-territorial obligations is important in climate change as the consequences of states' climate negligence often result in human rights violations across borders. Abramson argues how the territoriality condition was deliberately left out of the text of article 2 CRC. During the drafting period of the CRC, the applicability of the Convention was explicitly linked to jurisdiction and the territory of a state. This was later amended 'to cover every possible situation', and only the concept of jurisdiction remained.<sup>280</sup> There is ambiguity over what can be defined as 'every possible situation'. The CRC Committee proposes that jurisdiction outside the state's territory can only be exercised if 'effective control' has been established.<sup>281</sup>

In addition, the petitioners refer to a Joint Statement by the CRC Committee and four other UN Treaty Bodies named 'Human Rights and Climate Change'.<sup>282</sup> In this statement, the petitioners highlight the extra-territorial obligations of states. This includes "taking measures to prevent foreseeable human rights harms caused by climate change and regulating activities that contribute to such harm".<sup>283</sup> An example is in the CRC Committee's COs to Norway, where it recommended an increased focus on alternative energy sources and to "establish safeguards to protect children, both in the State party as well as abroad, from the negative impacts of fossil fuels".<sup>284</sup>

#### 4.5.3.3. The Exhaustion of Domestic Remedies Under OPIC

According to article 7(e) and Rule 16(3)(g) OPIC, the CRC Committee shall consider a communication inadmissible when all available domestic remedies have not been exhausted. The HRC has frequently waived the requirement of exhausting all domestic remedies based on the 'unreasonably prolonged' exception due to the detrimental impact a delay can have on children's well-being and development.<sup>285</sup> *Juliana v US* has been pending for six years, demonstrating how the 'unreasonably prolonged' argument invoked by the petitioners is justifiable.

In *Sacchi*, Brazil, France, and Germany have claimed that the petitioners did not first pursue domestic remedies, rendering this communication inadmissible. However, the petitioners invoked two exceptions that apply to the application of remedies in instances where this process would be "unreasonably prolonged" or "unlikely to bring effective relief." Firstly, the petitioners would be forced

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<sup>280</sup> Sharon Detrick, *The United Nations Convention on the Rights of the Child: A Guide to the 'Travaux Préparatoires'* (Martinus Nijhoff 1992) 147.

<sup>281</sup> Chrisje Sandelowsky-Bosman and Ton Liefwaard, 'Children Trapped in Camps in Syria, Iraq and Turkey: Reflections on Jurisdiction and State Obligations Under the United Nations Convention on the Rights of the Child' (2020) 38 *Nordic Journal of Human Rights* 149.

<sup>282</sup> CEDAW and others, 'Joint Statement on Human Rights and Climate Change' (OHCHR 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998>.

<sup>283</sup> *Sacchi et. al* (Petitioners reply) (n 279) para 19.

<sup>284</sup> CRC/C/NOR/CO/5-6, para 27 (*emphasis added*).

<sup>285</sup> *C.L.C.D. and others v. Colombia* [2016] CCPR/C/116/D/2399/2014.

to exhaust local remedies in all five respondent states, resulting in unduly burdensome costs and efforts.<sup>286</sup> Secondly, in the petitioner's reply, precedents were highlighted affirming that "in urgent situations, excessively prolonged remedies may be ineffective".<sup>287</sup> Given the urgency in dealing with the climate crisis, the children claim that this would significantly delay the case.

#### 4.5.8. Using the Right to Life and Right to Health as Tools in Climate Litigation

The communication cites jurisprudence from both UN Treaty Bodies and regional human rights courts in stating that the right to life encompasses a positive obligation on states to protect against the deprivation of life by private actors and or other states.<sup>288</sup> The petitioners highlight positive obligations under article 24 CRC in providing children with the highest attainable standard of health. In accordance with article 3(1) CRC, all governmental decision-making involves weighing diverging interests to ensure that children's interests are a 'primary consideration'. The best interests principle "parallels the principle of intergenerational equity" under the UNFCCC. This "places a duty on current generations to act as responsible stewards of the planet and ensure the rights of future generations to meet their developmental and environmental needs."<sup>289</sup>

#### 4.5.9. Proving a Causal link

Proving a causal link between the harm suffered due to climate change and the acts or omissions by states has proven to be a significant hurdle in climate litigation. In the Dutch Supreme Court ruling in *Urgenda*, which can be considered the most substantial 'climate' ruling to date, it was held that climate science indeed creates a causal link between climate-related harm to humans and states emissions. The Dutch government committed to reducing the capacity of its remaining coal-fired power stations by 75% and to implementing a €3 billion package aimed at reducing emissions by 2020.<sup>290</sup> The Supreme Court ruled that the European Convention on Human Rights (ECHR) implies positive obligations on states to prevent dangerous climate change based on article 2 ECHR, the right to life, and article 8 ECHR, the right to a private and family life.<sup>291</sup>

Furthermore, *Sacchi* emphasizes the applicability of extra-territorial jurisdiction to transboundary environmental harm. It brings to the forefront creative insights into how notions such as causality, precautionary measures, and shared responsibility could be invoked when considering states obligations under the CRC. *Sacchi* presents a unique opportunity for the CRC Committee to provide

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<sup>286</sup> *Sacchi et. al* (n 24) paras 311-313.

<sup>287</sup> *Sacchi et. al* (Petitioners reply) (n 279) para 11; See also *R.K. v Spain* (Communication No 27/2017, UN Doc CRC/C/82/D/27/2017, 5 November 2019) para 8.3; *N.B.F. v Spain* (Communication No 11/2017, UN Doc CRC/C/79/D/11/2017, 18 February 2018) para 11.3.

<sup>288</sup> *Ibid* 259.

<sup>289</sup> *Sacchi et. al* (n 24) para 302.

<sup>290</sup> *State of the Netherlands v Urgenda Foundation*, Dutch Supreme Court, The Case No 19/00135 (Sup. Ct., Civ. Div. 2019), 20<sup>th</sup> December 2019.

<sup>291</sup> *Urgenda* (n 290) para 5.2.2.

elucidation on these concepts.<sup>292</sup> This case provides insights into the scope of the 'living instrument doctrine' and how this can be used to argue human rights violations caused by climate change.<sup>293</sup> It will be interesting to see if the Committee extends states positive obligations under the CRC beyond their territory and finds this case admissible. If the Committee establishes a 'causal link' between the harm suffered to the children and the emissions levels perpetrated by states, this would be a significant step forward for the world in promoting children's rights in the context of climate change.<sup>294</sup>

#### 4.6. *Julianna et al. v United States*

*"I do not doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society."*

**US District Court Judge Ann Aiken<sup>295</sup>**

On the 12<sup>th</sup> of August 2015, in the case of *Juliana*<sup>296</sup>, 21 children between eight to nineteen years old filed a landmark constitutional climate lawsuit against the US government, submitting that their constitutional rights have been violated due to dangerous carbon dioxide concentrations. Future generations of children are also listed as plaintiffs.<sup>297</sup> They alleged that the US government has been aware of the impact of the fossil fuel industry on global warming since the 1960s and has done nothing to stop it. The plaintiffs argue that the US government acted negligently in continuously subsidizing, encouraging, and authorizing fossil fuel consumption, which has inflicted present-day injuries on all the children involved.<sup>298</sup> They also allege that the US government is violating their constitutional rights to life, liberty, and property and failing to protect essential public trust resources. Accordingly, the plaintiffs sought declaratory relief and an injunction ordering the government to implement a plan to phase out fossil fuel emissions.<sup>299</sup> Despite the plaintiffs overcoming a myriad of government challenges, this case did not reach trial. Instead, the US government has filed an unprecedented onslaught of dilatory motions and petitions.<sup>300</sup>

The Ninth Circuit, by a majority, dismissed the case on the 17<sup>th</sup> of January 2020 in a sharply divided opinion of two to one. With great reluctance, the court concluded that the case must be redirected to

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<sup>292</sup> Bakker, 'Baptism of fire?' (n 262) 25.

<sup>293</sup> Ibid 25.

<sup>294</sup> Ibid.

<sup>295</sup> '*Juliana v. US — Our Children's Trust*' (*Our Children's Trust*) <https://www.ourchildrenstrust.org/juliana-v-us>.

<sup>296</sup> *Juliana v. US.*, 217 F. Supp. 3d 1224, 1250 (D. Or., 2016)).

<sup>297</sup> Patti Moore, Danny Noonan and Erik Woodward, '*Juliana v. US and the Global Youth-Led Legal Campaign for a Safe Climate*', *Standing up for a Sustainable World* (Edward Elgar Publishing 2020) 152.

<sup>298</sup> Ibid 152.

<sup>299</sup> Ibid.

<sup>300</sup> Moore et al. (n 297) 153.

the executive and legislative branches of government, as federal courts cannot remedy their injuries.<sup>301</sup> It was held that ordering the government to adopt “a comprehensive scheme to decrease fossil fuel emissions and combat climate change” would exceed a federal court’s remedial authority.<sup>302</sup>

District Judge Josephine L. Staton dissented with a powerful analogy:

[I]t is as if an asteroid were barrelling towards Earth, and the government decided to shut down our only defences. Seeking to quash this suit, the government bluntly insists that it has the absolute and unreviewable power to destroy the Nation”.<sup>303</sup>

The plaintiffs filed an “en banc” petition before the Ninth Circuit to review its decision on the 2<sup>nd</sup> of March 2020. However, in February 2021, the Ninth Circuit upheld the panel decision, and the majority of judges declined to rehear the case again.<sup>304</sup> As of March 2021, the attorneys for the youth plaintiffs filed a motion to amend their complaint, and as of June 2021, the attorneys will meet for a settlement conference.<sup>305</sup> This case still has its chances for success.

#### 4.7. Climate Litigation Invoking the Right to Life and the Right to Health

States such as the US, Peru, South Korea, Ireland, France, Belgium, Sweden, Switzerland, Germany, and Canada have ongoing legal proceedings regarding states’ human rights obligations to mitigate climate change. The applicants in these national cases constantly rely on the legal argument that reducing emissions with the highest possible level of ambition amounts to a due diligence standard for complying with human rights obligations and following the concepts of ‘fair share’ or ‘common but differentiated responsibilities’.<sup>306</sup>

In December 2019, in *Alvarez et al. v. Peru*<sup>307</sup>, seven children filed a complaint against the Peruvian government due to insufficient action to stop deforestation in the Amazon. The plaintiffs argued that their human and constitutional rights to a healthy environment, life, water and health had been violated. Their ultimate aim in this litigation is to require Peru to achieve net-zero deforestation in the Amazon by 2025. This case shows how the right to health and the right to life can be used to influence state behaviour.

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<sup>301</sup> *Juliana v. US.*, No. 18-36082, D.C. No. 6:15-cv-01517AA (US. 9<sup>th</sup> Cir. 2020) “Dissenting Opinion Judge Stanton” 34.

<sup>302</sup> *Juliana* (9<sup>th</sup> Cir. 2020) page 5.

<sup>303</sup> *Ibid* “Dissenting Opinion Judge Stanton” page 32.

<sup>304</sup> *Children's Trust* (n 295).

<sup>305</sup> *Ibid*.

<sup>306</sup> *Ibid*.

<sup>307</sup> *Álvarez et al v. Peru*, Señor Juez del Juzgado Constitucional de Turno de la Corte Superior de Justicia de Lima, December 2019.



In March 2020, in *Kim Yujin et al. v South Korea*, 19 young people claimed that South Korea's emission reduction target for 2030 was inadequate in keeping global temperatures below 2°C. The applicants held that these targets violate their constitutional rights to life, human dignity, a healthy environment, equality before the law, and non-discrimination.<sup>308</sup> If this case is successful, it would potentially require South Korea to bring their emission reduction targets in line with the PCA goals having a similar outcome to the *Urgenda* ruling. This case is the first of its kind emerging in East Asia.<sup>309</sup>

In the case of *Friends of the Irish Environment (FIE) v. Ireland*<sup>310</sup>, filed in 2017, an advocacy group filed suit in the High Court, arguing that the Irish government's approval of the National Mitigation Plan (NMP) violated Climate Action, the Low Carbon Development Act of 2015 and the Irish Constitution. It also claimed that Ireland violated its ECHR obligations, notably the right to life and the right to private and family life. In a landmark ruling, the Supreme Court quashed the government's NMP.<sup>311</sup> The Irish Supreme Court's judgment may offer lessons for the future of some national law jurisprudence. This case forms part of a small number of strategic litigation cases held globally in which the final instance court rules that a government's mitigation efforts do not comply with the law. This case is significant as constitutional rights to health and life were invoked to quash the Irish government's insufficient policies.

On the 2<sup>nd</sup> of September 2020, in *Duarte Agostinho and others v. Portugal and 32 other States*<sup>312</sup>, six Portuguese youth filed a complaint against 32 European countries. The complaint alleges that the respondents have violated human rights by failing to take sufficient action on climate change. The applicants seek an order requiring more ambitious action to be taken.<sup>313</sup> This case begs a similar legal question to *Sacchi*. Are the applicants subject to the jurisdiction of the respondent states considering the commitments made upon ratification of the PCA in 2015? The applicants claim that GHG emissions negatively impact their health and standard of living and that the respondent states are not complying with their positive obligations under articles 2, 8 and 14 ECHR. This is significant as it questions the extra-territorial obligations of states which is fundamental to climate litigation.

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<sup>308</sup> Setzer (n 232) 15.

<sup>309</sup> Constitutional Court of South Korea, *Do-Hyun Kim et al. v. South Korea*, 12 March 2020 (pending).

<sup>310</sup> *Friends of the Irish Environment v. Ireland*, 2017 No. 793 JR.

<sup>311</sup> *Friends of the Irish Environment v. Ireland*, 2020 No.49 IESC; Orla Kelleher, 'The Supreme Court of Ireland's Decision in Friends of the Irish Environment v Government of Ireland ("Climate Case Ireland")' (*Ejiltalk.org*, 2020) <https://www.ejiltalk.org/the-supreme-court-of-irelands-decision-in-friends-of-the-irish-environment-v-government-of-ireland-climate-case-ireland/>.

<sup>312</sup> *Duarte Agostinho and others v. Portugal and 32 other States*, Application No. 39371/20, ECtHR, 2<sup>nd</sup> September 2020.

<sup>313</sup> 'Duarte Agostinho and others v. Portugal and 32 Other States - Climate Change Litigation' (*Climate Change Litigation*, 2020) <http://climatecasechart.com/climate-change-litigation/non-us-case/youth-for-climate-justice-v-austria-et-al/>.

#### 4.8. Conclusion

In summary, this chapter examined the increasing climate litigation that has emerged, reaching nearly every jurisdiction globally. Chapter 4 began by discussing the recent trends and drivers of litigation, such as worldwide school strikes initiated by Greta Thunberg and the failure of the PCA and UNFCCC. Cases have been filed against the 'carbon majors' changing the nature of litigation where corporations such as *RDS* are being held accountable, as demonstrated in *Milieudefensie et al.*

In answering the research question, this chapter analyzes OPIC as a vital tool within the CRC's legal framework in protecting children's right to health and right to life. This mechanism was criticized for its slow ratification uptake and limitations concerning access to justice for children. *Sacchi* was examined in detail as this pending case illustrates the obstacles standing in the way of accessing climate justice. Legal issues such as the *locus standi* of the applicants, questions arising over extra-territorial jurisdiction and the exhaustion of domestic remedies have been discussed to paint a picture of the legal challenges facing child climate litigants today.

This chapter also focused on examining jurisprudence from other national courts where the right to health and the right to life were invoked. *Juliana* has been ongoing for six years showing how litigation can be unduly prolonged. *Juliana* not only presaged the global youth-led climate movement, but it also continues to be a significant part of it. This case shows how children are becoming increasingly vocal about climate change's adverse health impacts and the effect on future generations. Other national-level cases were examined and were all aimed at establishing whether reducing emissions with the highest possible level of ambition amounts to a due diligence standard in the compliance of human rights obligations. The outcome of these cases will serve as important precedents and demonstrates how articles 6 and 24 CRC can be used to mitigate climate change and protect children's rights.

## 5. Conclusion & Moving Forward

This thesis has analyzed the effectiveness of the CRC's legal framework in protecting children's right to health and right life in the face of a climate change crisis. In analyzing this research question, this thesis examined whether articles 24 and 6 CRC provide adequate protection to children in the context of climate change. This thesis assessed the frequency in which the CRC Committee has reported on climate change within its COs and GCs focusing on the right to health and right to life. These two provisions have proven to be under a direct threat from climate change and are essential elements to consider in evaluating the CRC's legal framework. This thesis assessed whether climate refugees are sufficiently protected under the CRC in light of the refugee crisis and mass displacement occurring across the world as a result of climate change. Furthermore, the effectiveness of OPIC as a mechanism for remedying child rights violations in the face of climate challenges and disasters was also examined.

It is argued that due to the CRC Committee's considerable backlog and high volume workload, its COs often remain at a rather general level resulting in their jurisprudential impact being marginal and exceptional. This undermines its reporting credibility and effectiveness. The CRC Committee tends to link climate change, the environment and the right to health together frequently in COs and GCs. However, article 6 CRC is far less likely to be mentioned in this context despite its non-derogable nature. This provision is under a severe threat due to climate change and is one of the guiding principles underpinning all other rights under the CRC. However, between 2014 to 2021, it only appeared in 10% of COs. Therefore, it is recommended that the Committee considers linking article 6 to climate change and the environment more often in COs and in the upcoming GC.

This thesis explored how the right to health and the right to life are negatively impacted due to climate change. This is demonstrated through malnutrition, the spread of infectious diseases, water scarcity, air pollution, and mental health effects. This thesis touched on the impacts of climate change on indigenous children using the Genocide-Ecocide nexus. It is recommended that indigenous families are provided with special protection. We must respect and learn the indigenous agroecological techniques to counter climate change. Thus, this will lower production costs and increase the availability of food without threatening the environment.

This thesis also considered the vulnerability of child climate refugees as the number of environmental migrants is expected to rise in the coming decades due to climate change. There is a lacuna within the 1951 Refugee Convention that fails to recognize climate refugees rendering the protection offered by the CRC, such as article 22, meaningless. This thesis recommends that states establish a universal definition of a climate refugee and lower the threshold needed to invoke *non-refoulement* obligations. The definition of a refugee under the 1951 Convention is outdated and needs to be reformed in light of present-day conditions. The CRC's legal framework does not always translate effectively into national immigration policies. This thesis recommends establishing a holistic and comprehensive legal framework to fulfil children's rights in the context of migration. The case of *Teitiota* illustrates just how far we have come in recognizing climate refugees, but this judgement also showed us just how much progress we still need to make. Considering the knowledge, data and other resources needed for combating climate change, international co-operation is also a fundamental element of a child rights-based approach to addressing this crisis.

The OPIC was examined to analyze whether the CRC's legal framework is capable of remedying the all-encompassing challenges of climate change. This analysis was conducted using the pending case of *Sacchi*. OPIC has a slow ratification rate rendering it inaccessible to a large proportion of children. This mechanism has various procedural limitations for children seeking remedies for the violations of

their rights. These include the *locus standi* of the applicants, the exhaustion of domestic remedies requirements, ambiguity surrounding extra-territorial jurisdiction and the requirement that the child must be a citizen of a state which is a party to OPIC.

Climate change only features within 35% of the COs issued by the Committee since 2014 and in one GC issued since 2001. The lack of reporting by the Committee delegitimizes the status of climate change and sends a message to states that this is not a matter of urgency. This thesis determined that the environment was mentioned in 58% of COs issued from 2014 to 2021 and 44% of the 25 GCs as of July 2021. However, the CRC Committee cannot be excused for discussing climate change so infrequently. Likewise, states implementation of environmental measures cannot be considered sufficient if, at the same time, they are hypocritically subsidizing coal companies. Morally speaking, Burkard notes, "while the environment is an object of ethical reflection, climate frames ethics itself".<sup>314</sup> We need to follow the scientific predictions and get below 350 parts per million. This is not a time for political deals. Consequently, conventional environmental measures featuring within the CRC's legal framework are insufficient and cannot be considered a substitute to confront the climate crisis.

The consequences of climate change will shake the very foundation of human existence in the years ahead. We have the science to tell us how to mitigate climate change and maintain a decent quality of life that respects children's rights, so we must immediately engage in these actions. What we do now will define humanities existence in years to come. We need to act now to avoid '**existential oblivion**'.

There is still hope for a bright future for children's rights across the world.

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<sup>314</sup> Burkard (n 73) 8.

## Appendix A

**Table of CRC Concluding Observations to the Highest Emitting GHG Member States Who Have a Global % Share of CO<sub>2</sub> of 0.11% and Above: Explicit Mention of Climate Change and the Environment Concerning the Right to Health and Right to Life (2014 – July 2021)<sup>315</sup>**

State Party	Year	Climate Change	Environment	Right to Health	Right to Life	% Share of Global CO <sub>2</sub> <sup>316</sup>	Tons per capita <sup>317</sup>
CHINA	Last CO submitted 2013	N/A	N/A	N/A	N/A	28%	7.38
UNITED STATES	Not a party	Not a party	Not a party	Not a party	Not a party	15%	15.52
INDIA	2014 CRC/C/IND/CO/3-4	No	Yes (para 30)	Yes (para 30)	No	7%	1.91
RUSSIA	2014 CRC/C/RUS/CO/4-5	No	Yes (para 20, 21)	Yes (para 20, 21)	No	5%	11.44
JAPAN	2019 CRC/C/JPN/CO/4-5	Yes (para 37)	Yes (para 15)	Yes (para 37)	No	3%	9.70
GERMANY	2014 CRC/C/DEU/CO/3-4	No	Yes (para 23)	Yes (para 22, 23)	No	2%	9.44
IRAN	2016 CRC/C/IRN/CO/3-4	No	Yes (para 73, 74)	Yes (para 73, 74)	No	2%	8.08
SAUDI ARABIA	2016 CRC/C/SAU/CO/3-4	No	No	No	No	2%	15.94
INDONESIA	2014 CRC/C/IDN/CO/3-4	No	No	No	No	2%	2.03
CANADA	Last CO submitted 2012	N/A	N/A	N/A	N/A	2%	18.58
KOREA	2017 CRC/C/PRK/CO/5	Yes (para 43)	No	Yes (para 43)	Yes (para 17)	1.69%	11.85
MEXICO	2015 CRC/C/MEX/CO/4-5	No	Yes (para 52)	Yes (para 52)	No	1%	3.58

<sup>315</sup> The States are ranked in order of who emits the highest global share % of CO<sub>2</sub> emissions globally. It is also important to consider the tons per capita section on the right as this illustrates the consumption patterns and lifestyle choices of those living in each State; the higher the figure, the larger the individual carbon footprint each citizen contributes. The right to health and the right to life are only considered if relevant to climate change, the environment and its impacts.

<sup>316</sup> Hannah Ritchie and Max Roser, 'CO<sub>2</sub> and Greenhouse Gas Emissions' (Our World in Data) <https://ourworldindata.org/CO2/country/chile#per-capita-how-much-CO2-does-the-average-person-emit>. accessed 5 May 2021 (information based on data from 2019).

<sup>317</sup> 'CO<sub>2</sub> Emissions Per Capita - Worldometer' (*Worldometers.info*) <https://www.worldometers.info/CO2-emissions/CO2-emissions-per-capita/>. accessed 29 May 2021 (information based on data from 2016).

<b>SOUTH AFRICA</b>	2016 CRC/C/ZAF/CO/2	Yes (para 53)	Yes (para 19, 20)	Yes (para 20)	Yes (para 27)	1%	6.95
<b>BRAZIL</b>	2015 CRC/C/BRA/CO/2-4	No	Yes (para 65, 21, 22)	Yes (para 22, 65)	No	1%	2.25
<b>TURKEY</b>	Last CO submitted 2012	N/A	N/A	N/A	N/A	1%	4.61
<b>AUSTRALIA</b>	2019 CRC/C/AUS/CO/5-6	Yes (para 15, 22, 40, 41)	Yes (para 15, 17, 22, 41)	Yes (para 17)	Yes (para 22)	1%	17.10
<b>UNITED KINGDOM</b>	2016 CRC/C/GBR/CO/5	Yes (para 68, 69)	Yes (para 68, 69)	Yes (68, 69)	No	1%	5.55
<b>POLAND</b>	2015 CRC/C/POL/CO/3-4	No	No	No	No	1%	7.81
<b>ITALY</b>	2019 CRC/C/ITA/CO/5-6	No	Yes (para 17)	No	No	0.93%	5.90
<b>FRANCE</b>	2016 CRC/C/FRA/CO/5	No	Yes (para 22)	Yes (para 22)	No	0.93%	5.13
<b>SPAIN</b>	2018 CRC/C/ESP/CO/5-6	Yes (para 36)	Yes (para 36)	Yes (para 36)	No	0.89%	5.40
<b>UNITED ARAB EMIRATES</b>	2015 CRC/C/ARE/CO/2	No	Yes (para 55, 56)	Yes (para 55, 56)	No	0.61%	23.37
<b>ARGENTINA</b>	2018 CRC/C/ARG/CO/5-6	No	Yes (para 13)	Yes (para 13)	Yes (para 15)	0.56%	4.61
<b>PAKISTAN</b>	2016 CRC/C/PAK/CO/5	No (57, 58)	Yes (57, 58)	Yes (57, 58)	No	0.50%	0.87
<b>VENEZUELA</b>	2014 CRC/C/VEN/CO/3-5	No	Yes (para 62)	No	No	0.49%	5.89
<b>THE NETHERLANDS</b>	2015 CRC/C/NLD/CO/4	No	Yes (para 22, 23)	Yes (para 23)	No	0.46%	9.62
<b>IRAQ</b>	2015 CRC/C/IRQ/CO/2-4	No	Yes (para 71)	No	No	0.45%	4.44
<b>BELGUIM</b>	2019 CRC/C/BEL/CO/5-6	Yes (para 35)	Yes (para 14, 35)	Yes (para 35)	No	0.27%	8.34
<b>OMAN</b>	2016 CRC/C/OMN/CO/3-4	No	No	No	No	0.25%	19.61
<b>CHILE</b>	2015 CRC/C/CHL/CO/4-5	Yes (para 64)	Yes (para 21, 69, 70)	Yes (para 21)	No	0.23%	4.46
<b>TURKMENISTAN</b>	2015 CRC/C/TKM/CO/2-4	Yes (para 50, 51)	Yes (para 50)	Yes (para 51)	Yes (para 50, 51)	0.22%	14.00
<b>COLOMBIA</b>	2015 CRC/C/COL/CO/4-5	No	Yes (para 18, 49, 50)	Yes (para 18, 49, 50)	No	0.22%	1.61

<b>BANGLADESH</b>	2015 CRC/C/BGD/CO/5	No	Yes (para 65)	No	No	<b>0.21%</b>	<b>0.47</b>
<b>AUSTRIA</b>	2020 CRC/C/AUT/CO/5-6	Yes (para 35)	Yes (para 14)	Yes (para 35)	No	<b>0.21%</b>	<b>8.43</b>
<b>PERU</b>	2016 CRC/C/PER/CO/4-5	No	Yes (para 23, 24)	Yes (para 23, 24)	No	<b>0.16%</b>	<b>1.87</b>
<b>SINGAPORE</b>	2019 CRC/C/SGP/CO/4-5	No	Yes (para 16)	Yes (para 16)	No	<b>0.14%</b>	<b>8.56</b>
<b>HUNGARY</b>	2020 CRC/C/HUN/CO/6	Yes (para 18(e))	No	No	No	<b>0.14%</b>	<b>5.23</b>
<b>NORWAY</b>	2018 CRC/C/NOR/CO/5-6	No	Yes (para 27)	Yes (para 27)	No	<b>0.12%</b>	<b>8.28</b>
<b>SERBIA</b>	2017 CRC/C/SRB/CO/2-3	Yes (para 53)	No	No	No	<b>0.12%</b>	<b>4.65</b>
<b>IRELAND</b>	2016 CRC/C/IRL/CO/3-4	No	Yes (para 24)	Yes (para 24)	No	<b>0.11%</b>	<b>8.32</b>
<b>SWITZERLAND</b>	2015 CRC/C/CHE/CO/2-4	No	Yes (para 23)	No	No	<b>0.11%</b>	<b>4.73</b>
<b>ECUADOR</b>	2017 CRC/C/ECU/CO/5-6	No	Yes (para 15)	No	No	<b>0.11%</b>	<b>2.43</b>
<b>SYRIAN ARAB REPUBLIC</b>	2019 CRC/C/SYR/CO/5	No	Yes (para 41)	Yes (para 41)	No	<b>0.11%</b>	<b>2.18</b>

## Appendix B

**Table of CRC Concluding Observations to States under a direct threat from climate change and have a % share of Global CO<sub>2</sub> emissions of below 0.09%: Explicit Mention of Climate Change and the Environment concerning the Right to Health and Right to Life (2014 – 2021)<sup>318</sup>**

State Party	Year Submitted	Climate Change	Environment	Right to Health	Right to Life	% Share of Global CO <sub>2</sub> <sup>319</sup>	Tons per capita <sup>320</sup>
<b>NEW ZEALAND</b>	2016 CRC/C/NZL/CO/5	Yes (para 34)	Yes (para 13)	Yes (para 34)	No	<b>0.09%</b>	<b>7.14</b>
<b>ANGOLA</b>	2018 CRC/C/AGO/CO/5-7	No	Yes (para 14, 33)	Yes (para 14)	No	<b>0.09%</b>	<b>1.06</b>
<b>BAHRAIN</b>	2019 CRC/C/BHR/CO/4-6	No	Yes (para 14)	No	No	<b>0.07%</b>	<b>17.15</b>
<b>GUATEMALA</b>	2018 CRC/C/GTM/CO/5-6	Yes (para 37)	Yes (para 12)	Yes (para 12)	Yes (para 15)	<b>0.05%</b>	<b>1.12</b>
<b>MONGOLIA</b>	2017 CRC/C/MNG/CO/5	Yes (para 36)	Yes (para 34)	Yes (para 34)	No	<b>0.05%</b>	<b>6.08</b>
<b>KENYA</b>	2016 CRC/C/KEN/CO/3-5	Yes (para 55, 56)	Yes (para 19, 20, 55)	Yes (para 19, 20)	No	<b>0.05%</b>	<b>0.33</b>
<b>SRI LANKA</b>	2018 CRC/C/LKA/CO/5-6	Yes (para 36)	Yes (para 13, 35)	Yes (para 13, 35)	Yes (para 17)	<b>0.05%</b>	<b>0.88</b>
<b>PANAMA</b>	2018 CRC/C/PAN/CO/5-6	No	Yes (para 14)	Yes (para 14)	No	<b>0.03%</b>	<b>2.87</b>
<b>CAMEROON</b>	2017 CRC/C/CMR/CO/3-5	No	Yes (para 12)	Yes (para 12)	No	<b>0.03%</b>	<b>0.40</b>
<b>JAMAICA</b>	2015 CRC/C/JAM/CO/3-4	Yes (para 50, 51)	Yes (para 51)	No	No	<b>0.03%</b>	<b>3.08</b>
<b>COTE D'IVOIRE</b>	2019 CRC/C/CIV/CO/2	No	Yes (para 16)	No	No	<b>0.03%</b>	<b>0.42</b>

<sup>318</sup> The States are ranked in order of who emits the highest share % CO<sub>2</sub> emissions globally. It is also important to consider the tons per capita section on the right as this illustrates the consumption patterns and lifestyle choices of those living in each State; the higher the figure, the larger the individual carbon footprint each citizen contributes. The right to health and the right to life are only considered if relevant to climate change and its impacts.

<sup>319</sup> Hannah Ritchie and Max Roser, 'CO<sub>2</sub> and Greenhouse Gas Emissions' (Our World in Data) <https://ourworldindata.org/CO2/country/chile#per-capita-how-much-CO2-does-the-average-person-emit>. accessed 5 May 2021 (information based on data from 2019).

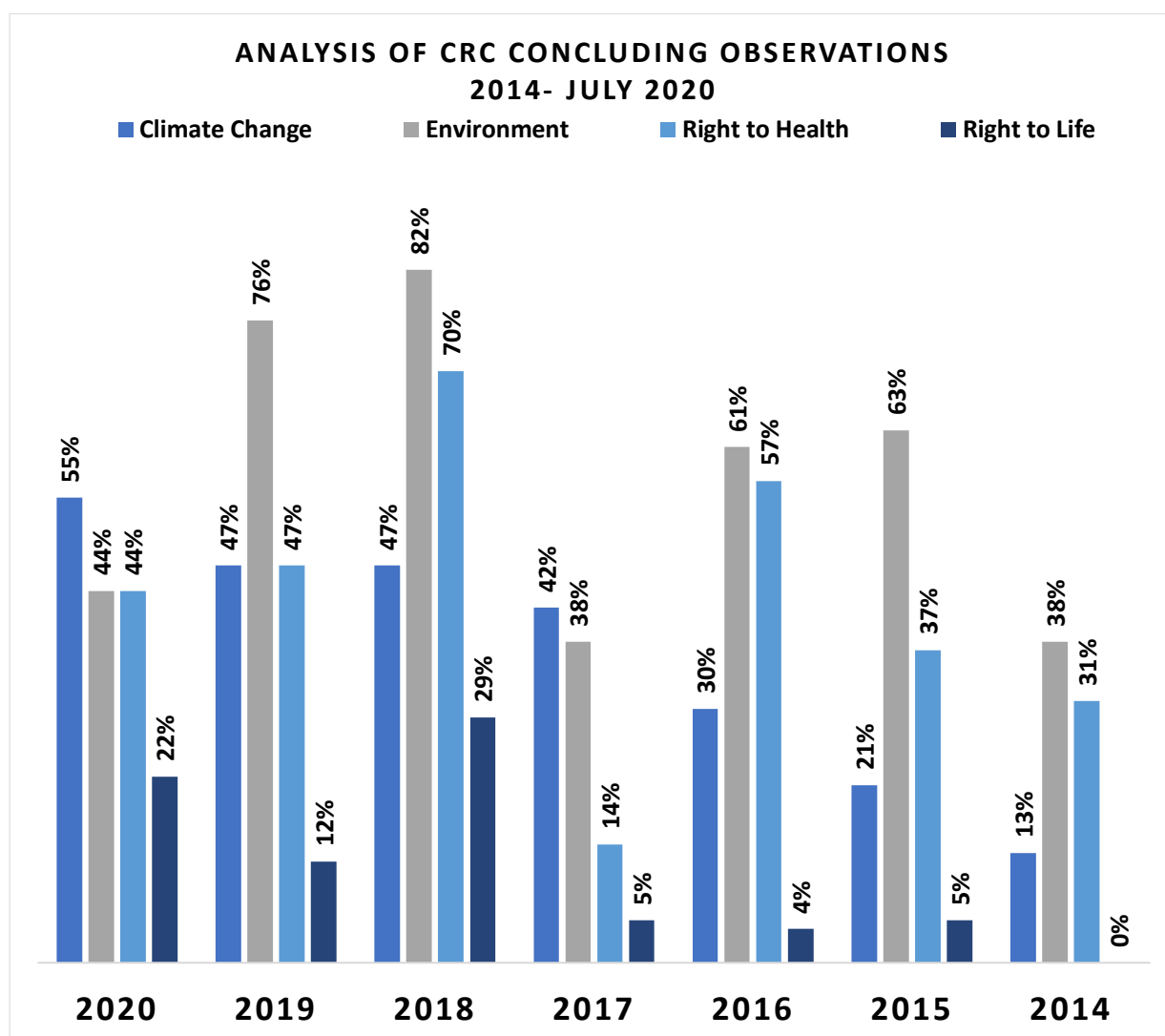
<sup>320</sup> 'CO<sub>2</sub> Emissions Per Capita - Worldometer' (Worldometers.info) <https://www.worldometers.info/CO2-emissions/CO2-emissions-per-capita/>. accessed 29 May 2021 (information based on data from 2016).



<b>TANZANIA</b>	2015 CRC/C/TZA/CO/3-5	No	Yes (para 21, 22)	No	No	<b>0.03%</b>	<b>0.18</b>
<b>LUXEMBOURG</b>	2021 CRC/C/LUX/CO/5-6	No	No	No	No	<b>0.03%</b>	<b>17.51</b>
<b>NEPAL</b>	2016 CRC/C/NPL/CO/3-5	No	No	No	No	<b>0.02%</b>	<b>0.29</b>
<b>COSTA RICA</b>	2020 CRC/C/CRI/CO/5-6	No	No	Yes (para 36(a))	Yes (para 19)	<b>0.02%</b>	<b>1.70</b>
<b>MOZAMBIQUE</b>	2019 CRC/C/MOZ/CO/3-4	Yes (para 37)	Yes (para 15)	No	No	<b>0.02%</b>	<b>0.21</b>
<b>TAJIKISTAN</b>	2017 CRC/C/TJK/CO/3-5	Yes (para 38)	No	No	No	<b>0.02%</b>	<b>0.70</b>
<b>GABON</b>	2016 CRC/C/GAB/CO/2	No	Yes (para 51)	No	No	<b>0.02%</b>	<b>0.84</b>
<b>SENEGAL</b>	2016 CRC/C/SEN/CO/3-5	No	Yes (para 20, 21)	Yes (para 20)	No	<b>0.02%</b>	<b>0.55</b>
<b>BOTSWANA</b>	2019 CRC/C/BWA/CO/2-3	No	Yes (para 52)	No	No	<b>0.02%</b>	<b>2.98</b>
<b>HAITI</b>	2016 CRC/C/HTI/CO/2-3	Yes (para 54, 55)	Yes (para 52)	Yes (para 52)	No	<b>0.01%</b>	<b>0.28</b>
<b>MALTA</b>	2019 CRC/C/MLT/CO/3-6	Yes (para 37)	No	Yes (para 37)	No	<b>0.01%</b>	<b>5.18</b>
<b>GUINEA</b>	2019 CRC/C/GIN/CO/3-6	Yes (para 36)	Yes (para 14, 15)	Yes (para 14, 15)	No	<b>0.01%</b>	<b>0.18</b>
<b>NIGER</b>	2018 CRC/C/NER/CO/3-5	Yes (para 36)	Yes (para 13)	Yes (para 17)	Yes (para 36, 17)	<b>0.01%</b>	<b>0.10</b>
<b>LAOS</b>	2018 CRC/C/LAO/CO/3-6	No	Yes (para 36)	Yes (para 36)	Yes (para 16, 17)	<b>0.01%</b>	<b>0.66</b>
<b>MALAWI</b>	2017 CRC/C/MWI/CO/3-5	Yes (para 36)	Yes (para 12)	No (para 12)	No	<b>0.01%</b>	<b>0.11</b>
<b>CONGO</b>	2017 CRC/C/COD/CO/3-5	No	Yes (para 14)	No	No	<b>0.01%</b>	<b>1.05</b>
<b>SURINAME</b>	2016 CRC/C/SUR/CO/3-4	Yes (para 32)	Yes (para 31, 36)	Yes (para 36)	No	<b>0.01%</b>	<b>3.81</b>
<b>ZAMBIA</b>	2016 CRC/C/ZMB/CO/2-4	No	Yes (para 21, 22)	Yes (para 21, 22)	No	<b>0.01%</b>	<b>0.26</b>
<b>MAURITANIA</b>	2018 CRC/C/MRT/CO/3-5	No	Yes (para 14)	Yes (para 14)	No	<b>0.01%</b>	<b>0.62</b>
<b>MAURITIUS</b>	2015 CRC/C/MUS/CO/3-5	Yes (para 57, 58)	No	No	No	<b>0.01%</b>	<b>2.53</b>

<b>CONGO</b>	2014 CRC/C/COG/CO/2-4	No	Yes (para 26, 27)	Yes (para 26, 27)	No	<b>0.01%</b>	<b>1.05</b>
<b>SEYCHELLES</b>	2018 CRC/C/SYC/CO/5-6	No	Yes (para 15)	Yes (para 15)	No	<b>0.00%</b>	<b>5.43</b>
<b>ANTIGUA AND BARBUDA</b>	2017 CRC/C/ATG/CO/2-4	Yes (para 46)	Yes (para 46)	No	No	<b>0.00%</b>	<b>4.64</b>
<b>ST. VINCENT &amp; GRENADINES</b>	2017 CRC/C/VCT/CO/2-3	Yes (para 51)	Yes (para 51)	No	No	<b>0.00%</b>	<b>3.31</b>
<b>TONGA</b>	2019 CRC/C/TON/CO/1	Yes (para 53, 54)	Yes (para 18, 28, 55, 56)	Yes (para 54)	No	<b>0.00%</b>	<b>2.49</b>
<b>PALAU</b>	2018 CRC/C/PLW/CO/2	Yes (para 48, 19)	Yes (para 22)	No	No	<b>0.00%</b>	<b>2.35</b>
<b>BHUTAN</b>	2017 CRC/C/BTN/CO/3-5	Yes (para 36)	No	No	No	<b>0.00%</b>	<b>2.28</b>
<b>COOK ISLANDS</b>	2020 CRC/C/COK/CO/2-5	Yes (para 44, 45)	Yes (para 45)	Yes (para 44)	Yes (para 44)	<b>0.00%</b>	<b>2.13</b>
<b>SAMOA</b>	2016 CRC/C/WSM/CO/2-4	Yes (para 48, 49)	No	No	No	<b>0.00%</b>	<b>0.87</b>
<b>SOLOMON ISLANDS</b>	2018 CRC/C/SLB/CO/2-3	Yes (para 42, 43)	No	No	No	<b>0.00%</b>	<b>0.55</b>
<b>VANTATU</b>	2017 CRC/C/VUT/CO/2-4	Yes (para 42, 43)	No	No	No	<b>0.00%</b>	<b>0.49</b>
<b>CABO VERDE</b>	2019 CRC/C/CPV/CO/2	Yes (para 72, 73)	Yes (para 21, 22)	Yes (para 61)	No	<b>0.00%</b>	<b>0.19</b>
<b>LESOTHO</b>	2018 CRC/C/LSO/CO/2	Yes (para 54)	Yes (para 54)	No	No	<b>0.00%</b>	<b>0.15</b>
<b>CENTRAL AFRICAN REPUBLIC</b>	2017 CRC/C/CAF/CO/2	No	Yes (para 21)	No	No	<b>0.00%</b>	<b>0.12</b>
<b>MICRONESIA</b>	2020 CRC/C/FSM/CO/2	Yes (para 56, 57, 68)	Yes (para 29)	No	No	<b>0.00%</b>	<b>N/A</b>
<b>TUVALU</b>	2020 CRC/C/TUV/CO/2-5	Yes (para 42, 43,)	No	Yes (para 42)	Yes (para 42)	<b>0.00%</b>	<b>N/A</b>
<b>FIJI</b>	2014 CRC/C/FJI/CO/2-4	Yes (para 55, 56)	No	No	No	<b>0.00%</b>	<b>N/A</b>
<b>MARSHALL ISLANDS</b>	2018 CRC/C/MHL/CO/3-4	Yes (para 33, para 34)	Yes (para 12)	Yes (para 12)	No	<b>0.00%</b>	<b>N/A</b>
<b>NAURU</b>	2016 CRC/C/NRU/CO/1	No	No	No	No	<b>0.00%</b>	<b>N/A</b>

<b>RWANDA</b>	2020 CRC/C/RWA/CO/5-6	No	Yes (para 17)	No	No	<b>0.00%</b>	<b>0.12</b>
<b>GAMBIA</b>	2015 CRC/C/GMB/CO/2-3	No	Yes (para 60, 61)	Yes (para 60, 61)	No	<b>0.00%</b>	<b>0.12</b>
<b>SAINT LUCIA</b>	2014 CRC/C/LCA/CO/2-4	Yes (para 52, 53)	Yes (para 53)	Yes (para 52)	No	<b>0.00%</b>	<b>3.38</b>

APPENDIX C<sup>321</sup>

<sup>321</sup> This graph was created in order to present to the reader the percentile ranges calculated from Annexe A and B of the CRC's COs issued between 2014 and 2020. This graph is colour coded for each keyword selected. Each year you can see the percentage of times the keywords appeared within CO's.

It is clear that climate change is gradually appearing more times each year as it shifted from 13% in 2014 to 55% in 2020.

The environment has fluctuated in frequency over the year and was mentioned in a record breaking 82% of reports in 2018 but this decreased to 55% in 2020.

Noteworthy is how the right to health appears in considerably more CO's than the keywords climate change or the right to life. Health has consistently appeared in just under half of all CO's issued in the past three years.

The right to life has appeared very infrequently in CO's. In 2015, 2016 and 2017 it appeared in just 5% of reports. This gradually increased to 29% in 2018, dropping down to 12% in 2019 and rising slightly again to 22% in 2020. This illustrates how the Committee does not have a tendency to group the right to life with climate change or environmental matters within reporting and is much more likely to mention the right to health in this regard.

**Appendix D<sup>322</sup>**

<b>General Comment</b>	<b>Climate Change</b>	<b>Environment</b>	<b>Right to health</b>	<b>Right to life</b>
<b>GC 1</b> CRC/GC/2001/1	No	Yes (para 1, 9, 13)	No	No
<b>GC 2</b> CRC/GC/2002/2	No	No	No	No
<b>GC 3</b> CRC/GC/2003/3	No	No	No	No
<b>GC 4</b> CRC/GC/2003/4	No	No	No	No
<b>GC 5</b> CRC/GC/2003/5	No	Yes (para 56)	No	No
<b>GC 6</b> CRC/GC/2005/6	No	No	No	Yes (para 23, 28)
<b>GC 7</b> CRC/GC/2006/7	No	Yes (para 10, 13)	Yes (para 10, 13)	Yes (para 10)
<b>GC 8</b> CRC/GC/2007/8	No	No	No	No
<b>GC 9</b> CRC/GC/2007/9	No	No	No	No
<b>GC 10</b> CRC/GC/2007/10	No	No	No	No
<b>GC 11</b> CRC/GC/2009/11	No	Yes (para 35, 53)	Yes (para 50, 53)	Yes (para 14, 35)
<b>GC 12</b> CRC/GC/2009/12	No	Yes (para 87, 134)	No	No
<b>GC 13</b> CRC/GC/2013/13	No	Yes (para 72)	Yes	No
<b>GC 14</b> CRC/GC/2013/14	No	Yes (para 19, 26, 30, 42)	No	Yes (para 42)
<b>GC 15</b> CRC/GC/2013/15	Yes (para 5, 50)	Yes (para 40, 49, 50, 57, 71)	Yes (para 49, 50, 57)	No
<b>GC 16</b> CRC/GC/2013/16	No	Yes (para 4, 19, 20, 29, 30, 31, 61)	Yes (para 19, 31)	Yes (para 4)
<b>GC 17</b> CRC/GC/2013/17	No	Yes (para 16, 17, 26, 32, 34, 35, 58)	Yes (para 17, 34)	No
<b>GC 18</b> CRC/GC/2014/18	No	No	No	No
<b>GC 19</b> CRC/GC/2016/19	No	No	No	No
<b>GC 20</b> CRC/GC/2016/20	No	Yes (para 2, 12, 17, 58)	Yes (para 17, 58, 79)	No
<b>GC 21</b> CRC/GC/2017/21	No	No	No	No
<b>GC 22</b> CRC/GC/2017/22	No	No	No	No
<b>GC 23</b> CRC/GC/201	No	No	No	No
<b>GC 24</b> CRC/GC/	No	No	No	No
<b>GC 25</b> CRC/GC/2021/25	No	No	No	No

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<sup>322</sup> This table represents an examination of all 25 GCs issued by the CRC Committee from 2001 to 2021.

APPENDIX E<sup>323</sup>

Region	Internal Displacement as a result of Climate Change, War and Violence (January - June 2020)
Sub-Saharan Africa <sup>324</sup>	Conflict & Violence – 2.9 million Disasters – 1.7 million
Democratic Republic of the Congo	People were displaced as a result of environmental disasters. There were heavy downpours, floods and landslides during the rainy season. In the town of Uvira, 5,500 homes were destroyed when several rivers and lakes burst their banks. <sup>325</sup> The flooding led to 84,000 new internal displacements. <sup>326</sup>
Somalia	Above-average flooding caused 505,000 new displacements in April and May. In addition, bushfires in the Galgaduud region also led to 4,000 displacements in June. Thus, there were severe conditions for a locust infestation that posed a significant threat to food production. <sup>327</sup>
Mozambique	Almost 6,500 people live in displacement sites, and more than 200,000 homes are damaged twelve months after cyclone Kenneth. An estimated 87,000 people who were displaced are still living in resettlement sites as of July 2020. <sup>328</sup>
Nigeria	8,800 new displacements due to flooding. Disasters increase the risk of diarrhoea, respiratory infections and water-borne diseases such as cholera in displacement camps. Covid-19 was reported in some camps in Borno. <sup>329</sup>

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<sup>323</sup> Appendix E illustrates the number of people internally displaced due to climate change, conflict and violence in the Sub-Saharan African region between January and June 2020.

<sup>324</sup> 'Internal Displacement 2020 (n 27) 8.

<sup>325</sup> Oficina para la Coordinación de Asuntos Humanitarios (OCHR)  
[https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Sitrep%20Uvira%20floods%20\\_7mai2020%20FINALE.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Sitrep%20Uvira%20floods%20_7mai2020%20FINALE.pdf) (OCHR 2020) (translated from Spanish).

<sup>326</sup> International Organization for Migration (IOM) Displacement Tracking Matrix (DTM).  
<https://displacement.iom.int/reports/rdc-%E2%80%94-sud-kivu-suivi-des-urgences-18-17-20-avril-2020?close=true>. (IOM 2020).

<sup>327</sup> Internal Displacement Monitoring Centre (IDMC), Analysis of Protection and Return Monitoring Network (PRMN) displacement data, 2020.

<sup>328</sup> IOM DTM, 'COVID-19 Preparedness Assessment Resettlement Report'  
<https://displacement.iom.int/reports/mozambique-%E2%80%93-covid-19-preparedness-assessment-resettlement-sites-report-6-july-2020?close=true>. (IOM 2020).

<sup>329</sup> IOM DTM, Displaced by Insurgency, Re-displaced by Flood; IDPs in Borno State cry out for help  
<http://saction.org/displaced-by-insurgency-re-displaced-by-flood-idps-in-borno-state-cry-out-for-help/>, (IOM 2020).

**APPENDIX F<sup>330</sup>**

<b>Region</b>	<b>Internal Displacement as a result of Climate Change, War and Violence (January - June 2020)</b>
<b>East Asia and the Pacific<sup>331</sup></b>	<b>Conflict &amp; Violence – 105,000 Disasters – 2.3 million</b>
<b>China</b>	Flooding and landslides accounted for about 90% of the disaster displacements in China, with the remaining 10% being forest fires and earthquakes. The flooding affected 38 million people and triggered 2.2 million evacuations. Around 29,000 homes were destroyed. More than 440 rivers burst their banks, and 33 swelled to their highest level on record. Floodwaters reached unprecedented levels taking three months to recede. <sup>332</sup>
<b>The Philippines</b>	811,000 people displaced as a result of disasters. The eruption of the Taal volcano eruption led to 506,000 evacuations. Typhoon Vongfong led to almost 300,000 displacements and destroyed more than 8,000 homes. <sup>333</sup>
<b>Indonesia</b>	Flooding, storms, landslides and earthquakes triggered displacement. Indonesia saw the worst flooding in the city since 1996. <sup>334</sup>
<b>Australia</b>	Bushfires of unprecedented scale and intensity raged in Australia between July 2019 and February 2020, triggering an estimated 65,000 displacements. <sup>335</sup>  Nearly 17 million hectares of land were burnt, killing over 1 billion animals. Record temperatures, prolonged drought and strong winds contributed to the intense bushfire season. There is also strong evidence linking the fires to climate change. One study suggests it increased the risk of weather conditions that fuelled them by at least 30%. <sup>336</sup>

<sup>330</sup> Appendix F illustrates the number of people internally displaced due to climate change, conflict and violence the East Asia and the Pacific region between January and June 2020.

<sup>331</sup> Internal Displacement (n 27) 25.

<sup>332</sup> 'China Focus: China Increases Disaster Relief Funds Amid Floods' (*Xinhuanet.com*, 2020) [http://www.xinhuanet.com/english/2020-07/13/c\\_139209865.htm](http://www.xinhuanet.com/english/2020-07/13/c_139209865.htm).

<sup>333</sup> Internal Displacement (n 27) 26.

<sup>334</sup> Joshua Berlinger and Isaac Yee C, 'Jakarta Braces For More Rain As Death Toll Reaches 66' (*CNN*, 2020) <https://edition.cnn.com/2020/01/06/asia/jakarta-floods-intl-hnk/index.html>. accessed 29 March 2021.

<sup>335</sup> Alexander I. Filkov and others, 'Impact of Australia's catastrophic 2019/20 bushfire season on communities and Environment. Retrospective analysis and current trends' (2020) 1 *Journal of Safety Science and Resilience*.

<sup>336</sup> 'AJEM January 2020 - Living With Bushfires on the Urban-Bush Interface | Australian Disaster Resilience Knowledge Hub' (*Knowledge.aidr.org.au*, 2021) <https://knowledge.aidr.org.au/resources/ajem-january-2020-living-with-bushfires-on-the-urban-bush-interface/>.

**APPENDIX G<sup>337</sup>**

<b>Region</b>	<b>Internal Displacement as a result of Climate Change, War and Violence (January - June 2020)</b>
<b>South- Asia<sup>338</sup></b>	<b>Conflict &amp; Violence – 121,000</b> <b>Disasters – 5.2 million</b>
<b>India</b>	2.7 million people displaced due to climate change. Cyclone Amphan in 2020 was the world's largest single displacement event. The storm triggered about 2.4 million new displacements in India. <sup>339</sup> Cyclone Nisarga hit the country's west coast two weeks later, causing 170,000 displacements. <sup>340</sup>
<b>Bangladesh</b>	2.5 million people evacuated. Cyclone Amphan prompted 2.4 million pre-emptive evacuations to government shelters. Monsoon rains caused extreme flooding. Some of the people displaced took refuge in government shelters, others on high ground and the streets. <sup>341</sup>
<b>Afghanistan</b>	30,000 people displaced due to flooding. Extreme winter conditions, including avalanches and hailstorms, led to more than 6,000 IDP's across the country. <sup>342</sup>

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<sup>337</sup> Appendix G illustrates the number of people internally displaced due to climate change, conflict and violence in the South Asian region between January and June 2020.

<sup>338</sup> Internal Displacement 2020 (n 28) 30.

<sup>339</sup> 'Cyclone Amphan highlights the value of multi-hazard early warnings' (World Meteorological Organization, 2020) <https://public.wmo.int/en/media/news/cyclone-amphan-highlights-value-of-multi-hazard-early-warnings>.

<sup>340</sup> Internal Displacement 2020 (n 28) 30.

<sup>341</sup> 'Intense Flooding In Bangladesh' (*Earthobservatory.nasa.gov*, 2020) <https://earthobservatory.nasa.gov/images/147057/intense-flooding-in-bangladesh>.

<sup>342</sup> Internal Displacement 2020 (n 28) 32.



**APPENDIX H<sup>343</sup>**

<b>Region</b>	<b>Internal Displacement as a result of Climate Change, War and Violence (January - June 2020)</b>
<b>Americas<sup>344</sup></b>	<b>Conflict &amp; Violence – 24,000 Disasters – 329,000</b>
<b>Colombia</b>	11,000 people displaced. Floods triggered 5,500 new displacements. The Timbiquí river burst its banks flooding many people's homes. Landslides and wildfires in other parts of the country also contributed to this figure. <sup>345</sup>
<b>Mexico</b>	9,000 people displaced. A wildfire in Hidalgo caused 1,400 evacuations. Tropical storms Arthur and Bertha caused further displacements. <sup>346</sup>
<b>Brazil</b>	Brazil recorded 295,000 new disaster displacements Flooding and heavy rainfall also triggered displacement. As a result, more than 100 municipalities declared states of emergency, and more than 60 people drowned or were trapped in mudslides. <sup>347</sup>
<b>United States</b>	12 storms made landfall in the United States in 2020. Wildfires triggered the majority of the new displacements. Flooding caused 17,000 new displacements. <sup>348</sup>

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<sup>343</sup> Appendix H illustrates the number of people internally displaced due to climate change, conflict and violence in the South Asian region between January and June 2020.

<sup>344</sup> Internal Displacement 2020 (n 28) 35.

<sup>345</sup> Ibid 35.

<sup>346</sup> Ibid 35; Jennifer Gray, 'Cristobal becomes the earliest third Atlantic named storm on record' (CNN, 2020).

<sup>347</sup> 'Brazil' (IDMC, 2021) <https://www.internal-displacement.org/countries/brazil>.

<sup>348</sup> Garret Ellison, 'Feds warned years ago Edenville Dam couldn't handle a Historic flood' (mlive.com, 2020) <https://www.mlive.com/news/saginaw-bay-city/2020/05/troubled-dam-breaks-sends-floodwaters-hurling-toward-midland.html>.

APPENDIX I<sup>349</sup>

Region	Internal Displacement as a result of Climate Change, War and Violence (January - June 2020)
Europe & Central Asia <sup>350</sup>	Disasters – 147,000 Conflict & Violence – 23,000
Uzbekistan	In May, major flooding resulted from the Sardoba reservoir dam collapsing, which triggered 70,000 displacements and 50 people needing hospital assistance. In addition, heavy rain and storms destroyed 5000 buildings in Bukhara the same month. <sup>351</sup>
Kazakhstan	There were 31,000 new people displaced as a result of the Uzbekistan dam collapsing. As a result, almost a third of the country was submerged in water. <sup>352</sup>  23,000 new displacements were caused as a result of conflict between the Kazakh and Dungan communities. <sup>353</sup>
Turkey	A 6.8 magnitude earthquake hit Turkey's eastern province in January 2020. This triggered 25,000 displacements. <sup>354</sup> Another 5.7 magnitude earthquake hit the eastern province of Bingöl in June.
France	A storm caused flooding in southern France, triggering more than 2,000 evacuations. <sup>355</sup>
United Kingdom	Two big storms hit the UK in February. Eight people were killed, hundreds of homes were destroyed, and buildings and other infrastructure damaged. Storm Dennis was the second-most intense storm on record in the North Atlantic. As a result, 3,400 homes were flooded during the month. <sup>356</sup>

<sup>349</sup> Appendix I illustrates the number of people internally displaced due to climate change, conflict and violence in the European and Central Asian region between January and June 2020.

<sup>350</sup> Internal Displacement 2020 (n 27) 39.

<sup>351</sup> 'Uzbekistan and Kazakhstan – Thousands Evacuate After Dam Fails' (*Floodlist.com*, 2020) <http://floodlist.com/asia/uzbekistan-kazakhstan-sardoba-dam-syrdarya-flood-may-2020>.

<sup>352</sup> 'Residents of Kazakh Flooded Villages are Waiting for Reparations from Uzbekistan' (*cabar.asia*, 2020) <https://cabar.asia/en/residents-of-kazakh-flooded-villages-are-waiting-for-reparations-from-uzbekistan>, accessed 19 May 2021.

<sup>353</sup> 'Crisis Watch Kazakhstan' (*Crisis Group*, 2020) <https://www.crisisgroup.org/crisiswatch/print?t=Crisiswatch+February+2020&crisiswatch=13502&date=February+2020>.

<sup>354</sup> Internal Displacement 2020 (n 27) 40; 'STL Situation Report V.3 - Elazığ And Malatya Provinces, Eastern Turkey, February 2020' (*Relief Web*, 2020) <https://reliefweb.int/report/turkey/stl-situation-report-v3-elaz-and-malatya-provinces-eastern-turkey-07-february-2020>.

<sup>355</sup> Internal Displacement 2020 (n 28) 40.

<sup>356</sup> Ibid.

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