

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

## **A Matter of [A Dignified] Life and Death Climate Change and Children's Rights**



Leiden University  
Faculty of Law  
2019-2020

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in International Children's Rights



Date: 10-07-2020  
Location: Leiden, The Netherlands

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## Acknowledgements

The first week of classes at Leiden Law I was honored to sit at a lunch table with **Professor Julia Sloth-Nielsen**. Of course, I had no idea then that eight months later **Professor Sloth-Nielsen** would be assigned as my thesis supervisor. I found working with a children's rights giant inspirational and exhilarating. I am grateful for **Professor Sloth-Nielsen's** counsel and her trust.

I also wish to thank my children, **Athena** and **Emerson**, both recent university graduates, for their love and for their support of my decision to gift all my personal belongings, pack two suitcases, and travel across the Atlantic to embark on a new future in Leiden. What they have taught me has deepened my understanding of and respect for the human rights of the child.

Finally, my deepest gratitude to all the children, and young at heart, who promote a healthy climate and the right to [a dignified] life for all.

Walter J. Burkard, 2020

## Executive Summary

In Chapter 1, I submit that climate scientists seeking to mitigate the impact of the climate crisis face three major challenges. First, despite Thunberg's "listen to the scientists" refrain, a systematic bias against science and the expertise of scientists undercuts climate change mitigation efforts. Second, science and politics are strange bedfellows, and although climate change devastates humans irrespective of political affiliation, the Left views climate change as an existential threat, and the Right are climate change apathetic or deniers. Third, most people have a distaste for, and are unwilling to confront, the messiness of the natural and the human worlds. Since predictions in climate models are contingent upon mitigating actions, the perception of the threat posed by climate change matters. If the threat of something "very bad" fails to attract attention, and the sound of a catastrophic or existential threat creates paralyzing fear, then humans will engage in little or no action, and the predictions in the models, which people already view with suspicion, will become even more dire. In addition, the relationship between climate change and children's rights is non-linear, and often serpentine, again raising suspicion about whether climate change is real.

Children have sought to overcome these challenges by speaking through words and actions about the impacts of climate change and the exigencies it creates. They have demonstrated that mitigating climate change and adapting to its effects is a matter of [a dignified] life and death. The CRC Committee has exhorted states (and others) to enable the participatory rights of children in all matters affecting them. Given that climate change impacts fundamentally on children's present and their future, the assumption is that the CRC Committee would protect, promote and fulfill children's rights in the face of climate change. Since good science involves examining commonly held assumptions, in this thesis I seek to determine whether the CRC Committee has been an ally or a foe to the children who seek to mitigate and adapt to the catastrophic impact of climate change.

In Chapter 2, I demonstrate that climate change might (or might not) only be a catastrophic threat, and not an existential one, but either way, the impact on humans will "very bad." Moreover, efforts to manage an existentialist threat- a threat that jeopardizes our mode of being-in-the-world, at the expense of confronting a catastrophic one, derails climate mitigation efforts. The impact of climate change is borne more immediately and most unmercifully by the vulnerable, the poor, ethnic and racial and religious minorities, persons with disabilities, and children.

Children not only are impacted by climate change, but they impact upon it as well. In Chapter 3, I explore the promise and the setbacks of children's climate activism. Guided by science, and rooted in ethical and pragmatic considerations, children have played a pivotal role in the climate movement, from Zero Hour to the Sunrise Movement to Earth Uprising to Fridays for Future, from *Juliana* to *Demanda Generationes Futuras* to *Sacchi*. They have shown we can avert the harshest ramifications of climate change by net zero carbon emissions and 100% renewable energy production. Yet their push for a Green New Deal has stalled, and their symbolic victory in *Juliana* does nothing to impede the path toward catastrophic warming.

The house is on fire. In Chapter 4, I consider whether the CRC Committee is prepared to use more than an elephant squirt to extinguish the flames. In Section 4.1 I note that there is no mention of climate change in the CRC, no OP on children and climate change, and no GC on climate change. The CRC Committee's failure to draft a GC on climate change, despite discussing the idea for half a decade, is damaging because procrastination belies urgency. In Section 4.2, I find that despite Arts' call for the CRC Committee to feature climate change in its COs, the Committee discussed climate change in only 26 of its 61 COs between 2017-April 2020. In Section 4.2.3, I explain that in the context of climate change,

the right to [a dignified] life trumps best interests. Given the irreversibility of climate change, and the need to objectively measure the impact of climate change upon children, in the context of climate change, the three-fold typology typically reserved for BIC- a substantive right, an interpretive legal principle, and a rule of procedure- informs the right to life. In Section 4.2.4, I recommend the CRC Committee restructure the Concluding Observations to include a distinct section on climate change and the right to [a dignified] life. Within this climate change section, in accordance with Sections 4.2.1 and 4.2.2, the CRC Committee should regularly include subsections on climate change and the business sector, and children's participation in climate change adaptation and mitigation. In addition, consistent with the goal of ensuring that States confront the climate crisis, the Committee should add other subsections as needed, either on a uniform permanent basis, or on a case-to-case basis contingent on a nation's situation during a particular reporting cycle. Finally, since it is malpractice to downplay a catastrophic threat to children, the CRC Committee should routinely link the climate change section to the priority issues section. In Section 4.3, I argue that the stakes in *Sacchi* are high. The CRC Committee has the opportunity to further enhance the legitimacy of the children's climate movement. I argue that the Committee should deny Brazil, France and Germany's OPIC article 7(e) objection because the application of remedies would be "unreasonably prolonged" and "unlikely to bring effective relief." I urge the CRC Committee to refrain from protecting the respondents based on political expediency at the expense of the real threats of climate change to the [dignified] lives of the child plaintiffs.

In Chapters 5-7, I examine the intricacies of climate change in developing states, those which bear the brunt of the impact of developed states' GHG emissions. I find that climate change has a potent impact upon the right to [a dignified] life, including the right to culture, the right to health and sanitation, and the right to protection from all forms of violence. In Chapter 5, I discuss the Bolivian Uru- Murato, the "water people." For years, multiple stressors threatened Lake Poopo's survival, but climate change- rapid warming and high transpiration rates- placed the final nail in Lake Poopo's coffin. The fate of Lake Poopo and concomitant death of the Uru-Murato culture demonstrate the ecocide-cultural genocide nexus in action. In Chapter 6, I analyze *Teitiota v. New Zealand* as a backdrop for examining the health and sanitation impacts of climate-induced disasters on I-Kiribati children. Since the Pacific Ocean likely will engulf Kiribati sometime this century, an international migration strategy must be developed and implemented expeditiously to avoid threats to the children's [dignified] right to life. In Chapter 7, I discuss how climate change functions as a "threat multiplier" to security in the Lake Chad Basin, exacerbating conflicts among States, fisherman, farmers and pastoralists, and providing an aperture for Boko Haram and ISWAP to terrorize communities. Boko Haram employs child suicide bombers to conduct attacks on soft marks, including IDP camps, markets and bus stations, depriving both victims, child suicide bombers and targeted civilians of the right to life.

Based upon my Concluding Observations restructuring recommendations in Section 4.2.4, in Sections 8.1-8.3, I provide sample COs for Bolivia, Kiribati, and Nigeria (one of the nations on LCB) on "Climate Change and the Right to [a Dignified] Life," with an emphasis on the issues discussed in Chapters 5-7. In reviewing these COs, I urge the reader to bear in mind the catastrophic risks posed by climate change, and the Herculean efforts of child climate activists to mitigate it. Is requesting the CRC Committee to prioritize climate change in the COs and to give due consideration to the merits of the child plaintiffs's Petition in *Sacchi* really asking too much?

## **Keywords**

Climate change - UN Convention on the Rights of the Child - CRC Committee - Right to Life - Dignified Life- Concluding observations - Children's Participation - OPIC - Greenhouse gases- Paris Climate Agreement - Climate mitigation - Intergovernmental Panel on Climate Change

## Overview of Main Findings

Humans are their own worst enemy in mitigating and adapting to climate change. Politics, ignorance and fear of the unknown delegitimizes science and the authority of scientists. Capitalists with vested interests obfuscate the scientific realities by arguing that projections on climate-induced devastation are overblown. A clever rhetorical tactic, but the science does not lie: climate change might (or might not) only be a catastrophic threat, and not an existential one, but either way, the impact of climate change on human life, especially on the vulnerable, including children, will be “very bad.” As a concrete example, even if in 2050 global warming displaces 250 million children, rather than the 500 million children projected, climate change threatens the right of children to [a dignified life].

Guided by science, and rooted in ethical and pragmatic considerations, children have played a pivotal role in the climate movement, from Zero Hour to the Sunrise Movement to Earth Uprising to Fridays for Future, from *Juliana* to *Demanda Generaciones Futuras* to *Sacchi*. In a broad sense, the children’s climate movement is the off spring of the CRC’s conception of children as rights holders and the CRC Committee’s promotion of the participatory rights of children in GC 12 and in its COs. Ironically, while the CRC Committee established a milieu conducive to a burgeoning children’s climate movement, it also has undercut the effectiveness of the movement by treating climate change as a pedestrian concern.

There is no mention of climate change in the CRC, no OP on children and climate change, and no GC on climate change. The CRC Committee’s failure to draft a GC on climate change, despite discussing the idea for half a decade, is damaging because procrastination belies urgency. Moreover, the CRC Committee has not heeded Karin Arts’ call for the Committee to feature climate change in its COs. In my independent evaluation of the CRC Committee’s COs from 2017-April 2020, I found that the Committee discussed climate change in only 26 of 61 COs. Eleven of the 26 COs involved developing island nations, and, consequently, the CRC Committee discussed climate change in the COs of less than a quarter of non-island nations. Given the global consequences of climate change, this defies logic. If you want to mitigate climate change in Palau or the Marshall Islands, both of which produce negligible GHG emissions, you are obligated to confront the largest GHG emitters, like China. Yet the CRC Committee failed to discuss climate change in 35 COs, including the COs of significant GHG emitters- e.g. Italy, Portugal, Argentina, Norway, as well as the COs of climate-devastated nations- e.g., Lao, Angola, and El Salvador. Second, the Committee made no mention of climate change in the business sector subsection of the COs. The Committee must underscore the State’s due diligence obligation to promulgate, implement and enforce a regulatory framework which ensures the business sector complies with international climate mitigation and adaptation standards. Third, contrary to the Committee’s advocacy of the participation of children in all matters that affect them, climate change only received mention in the children’s participation subsection of the CO’s in two instances. Fourth, in the COs, the Committee should organize climate change under the right to life, not health, as is currently the case, or BIC. Given the irreversibility of climate change, and the need to objectively measure the impact of climate change upon children, in the context of climate change, the three-fold typology typically reserved for BIC- a substantive right, an interpretive legal principle, and a rule of procedure- informs the right to life. Under the rubric of the right to [a dignified] life, climate change threatens the full gamut of CRC rights, including the right to culture [the Bolivian Uru-Murato children] the right to health and sanitation [the I-Kiribati children], and the right to protection from all forms of violence [the LCB children]. In the conclusion, I have drafted sample climate change COs for Bolivia, Kiribati, and Nigeria. Fifth, since it is malpractice to treat a catastrophic threat to children routinely, the Committee must link the climate change section with the “main areas of concern” section. Finally, I argue that, given the merits of the children’s *Sacchi* Complaint the CRC Committee must deny Brazil, Germany and France’s motion to dismiss on OPIC article 7(e) inadmissibility grounds, and forego the temptation to protect the respondents based on political expediency at the expense of the real threats of climate change to the [dignified] lives of the child plaintiffs.

## List of Abbreviations

<b>BIC</b>	The best interests of the child
<b>Boko Haram</b>	Jama'atu Ahlis Sunna Lidda'awati wal-Jihad
<b>CMOP</b>	Capitalist Mode of Production
<b>COs</b>	United Nations Committee on the Rights of the Child Concluding Observations
<b>CRC</b>	United Nations Convention on the Rights of the Child
<b>CRC Committee</b>	United Nations Committee on the Rights of the Child
<b>CSER</b>	Center for the Study of Existential Risk
<b>EU</b>	European Union
<b>GC</b>	General Comment
<b>GHG</b>	Greenhouse Gases
<b>GND</b>	Green New Deal
<b>HRC</b>	Human Rights Commission
<b>IACHR</b>	Inter-American Commission on Human Rights
<b>IDP</b>	Internally Displaced Persons
<b>IPCC</b>	Intergovernmental Panel on Climate Change
<b>IPT</b>	New Zealand Immigration and Protection Tribunal
<b>ISWAP</b>	Islamic State West Africa Province
<b><i>Juliana</i></b>	<i>Juliana v. the United States</i>
<b>LCB</b>	Lake Chad Basin
<b>NAPA</b>	National Adaptation Programme of Action
<b>NYS</b>	New York State
<b>NZ</b>	New Zealand
<b>OP</b>	Optional Protocol
<b>OPIC</b>	Optional Protocol on a Communications Procedure
<b>PTM</b>	Purlaka Tinta Maria
<b><i>Sacchi</i></b>	<i>Sacchi, et. al. v. Argentina, Brazil, France, Germany and Turkey</i>
<b><i>Teitiota</i></b>	<i>Teitiota v. New Zealand</i>

**UN**

United Nations

## 1. Introduction

### 1.1 Science, Politics, and the Messiness of the Natural and Human Worlds

Writing a thesis on climate change in the midst of COVID-19 is instructive. Both crises face many of the same mitigation challenges.

The first challenge is legitimizing science and the authority of scientists. The eco-conscious public might privately yawn at Greta Thunberg's "listen to the scientists" refrain,<sup>1</sup> yet on June 18, 2020, Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, confirmed that a systematic bias against science and the expertise of scientists is undercutting public health COVID-19 mitigation efforts,<sup>2</sup> highlighting the need for Thunberg, as well as Fauci, to double down on their pro-science rallying cry.

The second challenge, intimately related to the first, is that science and politics are strange bedfellows. In confronting COVID-19, wearing a non-medical cloth mask, the most basic public health "best practice," becomes politicized. Residents of blue states wear masks; residents of red states do not. Mask wearers are liberal/socialist/weak/scared; non-wearers are conservative/libertarian/strong/brave. This political dichotomization obscures the scientific reality, the one dichotomy that truly matters: wearing masks saves lives; not doing so spreads a potentially deadly virus.

Politics likewise infests climate issues. The Left appropriates a fuzzily conceived notion of climate change as an "existential threat." In June 2019, during a CNN Climate Town Hall,<sup>3</sup> three 2020 Democratic Party U.S. presidential candidates, Senators Elizabeth Warren and Kamala Harris, and Governor Jay Inslee, the self-proclaimed climate candidate, characterized climate change as an "existential threat." The Right, by contrast, are climate change apathetic or deniers. Paying homage to their capitalist gods, businesspersons rationally choose to spew carbon dioxide and methane into the atmosphere in pursuit of the "treadmill" of capital accumulation. Deflecting from the real issue, the harsh impact of climate change, particularly upon the less advantaged, capitalists also convince the white working class that socialist tree huggers will seize their guns, freedom and conservative- *i.e.*, patriarchal, racist, heterosexual, cisgender-values. Cynicism toward science and intellectual elites makes the white working class putty in the hands of their capitalist oppressors.

The polarity on whether climate change is an "existential" or a "nonexistent" threat is a microcosm of the Left-Right chasm in American politics and beyond.<sup>4</sup> Voices on opposing sides are vociferous, as exemplified by the following US Youth Climate Strike Facebook 2019 posts:

Bruce N Lesley Andrew- 9/6/19: "by totally forgetting about the CLIMATE...its doing just fine. In a few years you will feel so stupid and properly not even admit to being so silly as to believe in such an obvious fraud."

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<sup>1</sup> For example, on September 18, 2019, at a Climate Change Hearing before the US House of Representatives, Thunberg testified that we need to "listen to the scientists."

<sup>2</sup> J. Howard and V. Stracqualursi [June 18, 2020]. "Fauci warns of "anti-science bias" being a problem in US," [CNN.com/politics](https://www.cnn.com/politics)

<sup>3</sup> The youth-led Sunrise Movement won their campaign to have a U.S. presidential candidates debate on climate change.

<sup>4</sup> Climate change mitigation efforts should enjoy bipartisan support because climate change threatens national, as well as international, security.

Neal Moody-3/10/19: I also believe this planet needs saving! So I [am] highly thankful to these students! They see, they understand about the future of this planet and it doesn't look great at the moment. Not to mention, we are almost at the tipping point of NO RETURN!"

Pete Casey- 10/31/19: "Get serious. Meteorologists have trouble forecasting weather 5 days from now. Climatologists have been wrong a lot as well. We were to have had an ice age 30-40 years ago. Didn't happen. The climate has always been changing. We did have an ice age 10,000 years ago and then we warmed up. What caused that warm up? Not humans."

Rosaleen Butler- 3/2/19: "As a grandmother who grew up in a totally different environment I look upon today's youth and see bright, intelligent, confident, well educated young adults. They are concerned for their future as am I... They have the confidence and bravery to challenge those who believe the bottom line is more important than our beautiful planet."

Patrick Meyer- 3/16/19: "Brain washed fools. Taught propoganda by other brain washed fools who are convinced by liberals that want a reason to raise taxes. That is all this is, a tax scheme to redistribute wealth. ... Taxing cow gas? Really? Don't be so ignorant."

Mary McElroy Perry- 3/15/19: " The adults have failed to care for this beloved Earth. Prayers for surviving and love to the young activists."

Victor Sperier- 9/21/19: "It has nothing to do with climate change. It is about socialism. The whole thing is a scam."

Todd Tee- 6/26/19: "There is no Planet B. We need to support the youth to save their home." <sup>5</sup>

The third challenge, which further explains the delegitimization of science and the authority of scientists, as well as the tendency to retreat to the comfort zone of rigid party politics, is that most people have a distaste for, and are unwilling to confront, the messiness of the natural and human worlds. Scientists are not snake oil salesman. They do not wave a magic wand, and presto! fifteen COVID-19 cases go down to zero. They will not cut corners on vaccine testing protocols for the sake of political expediency. In grappling with a novel pandemic, scientists will engage in missteps, encounter gaps in knowledge, and issue revised recommendations, but none of these difficulties should detract from their legitimacy. In nations where COVID-19 has been depoliticized, and the work of scientists remains widely respected, such as in New Zealand and Iceland, the virus has virtually disappeared.

Climate science is more untidy than the science of infectious diseases. Since there is not now, nor will there ever be a vaccine to cure the ill-health of the climate, climate change will continue to threaten the right to [a dignified] life. However, the level of threat climate change poses remains an open question. Climate change could be an existential threat, but it might just be a catastrophic threat, though it is likely to exceed an extreme threat. Since predictions in climate models, in one direction or the other, are contingent upon mitigating actions, the perception of the threat posed by climate change matters. If the threat of something "very bad" fails to attract attention, and the sound of a catastrophic or existential threat creates paralyzing fear, then humans will engage in little or no action, and the predictions in the models, which people already view with suspicion, will become even more dire.

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<sup>5</sup> \_USYouthClimateStrike@climatestrikeUS\_ Facebook. Retrieved on June 1, 2020 from <https://www.facebook.com/ufi/reaction/profile/br...fier=10217874021344854&av=100023740781397>.

The relationship between climate change and children's rights is non-linear, and often serpentine, again raising suspicion about whether climate change is real. For example, in Mongolia, significant numbers of livestock deaths have diminished the food supply, preventing children from receiving adequate nutrition. So where does climate change fit in? But for climate-induced extreme winters pushing Mongolia's fragile ecosystem out of whack, there would have been no spike in malnourished children.<sup>6</sup> By categorizing climate change as a subsection of health in its COs, the CRC Committee perpetuates the view that climate change "naturally" impacts health. However, this categorization is misleading. What climate change really impacts upon is the right to a [dignified] life, which in turn ultimately transgresses a myriad of children's rights.

## 1.2 Research Question and Methods

In a broad sense, the burgeoning children's climate movement is the offspring of the CRC's conception of children as rights holders, and the CRC Committee's promotion of the participatory rights of children in GC 12 and its COs. Children have spoken in words and actions about the impacts of climate change and the exigencies which it creates. They have stated that mitigating climate change and adapting to its effects is a matter of [a dignified] life and death. They have engaged in climate strikes, filed climate lawsuits, and organized climate community projects. The CRC Committee has exhorted States (and others) to enable the participatory rights of children in all matters affecting them. Given that climate change impacts fundamentally on children's present and their future, the assumption is that the CRC Committee would protect, promote, and fulfill children's rights in the face of climate change. Since good science involves examining commonly held assumptions, in this thesis I seek to determine whether the CRC Committee has been an ally or a foe to the children who seek to mitigate and adapt to the catastrophic impact of climate change. I caution that with respect to climate change, as with racism, there is no middle ground. You are racist or anti-racist. Likewise, the CRC Committee can not shirk its responsibilities by arguing (rightly or wrongly) that it is more effective in addressing climate change than its UN peers. Unless the CRC Committee confronts climate change comprehensively and expeditiously, it leaves the impression that it is not a priority, or worse yet, that it is a hoax.

In examining this research question, I conduct library research and converse with children's rights advocates and area specialists. Initially, I explore the CRC Committee's discussion of climate change within its extensive body of work. Next, in expanding upon Arts' research, I analyze the CRC Committee's CO's from 2017-April 2020. Since children's participation in climate activities has skyrocketed in the last three years, it is reasonable to expect a concomitant increase in the CRC Committees' references to climate change in its COs. Third, I examine the children's climate change Complaint in *Sacchi*. While the outcome in *Sacchi* is still pending, to date the CRC Committee has not attempted to expedite the matter due to the potentially catastrophic impact of climate change. If *Sacchi* is declared inadmissible or found not to violate the right to life, it will reinforce the perception held by far too many due to ignorance or existentialism that climate change is, at best, overblown, and, at worst, a hoax.

In Chapter 2, I examine the catastrophic and existentialist threats posed by climate change, and the myriad ways in which they impact upon a child's right to [a dignified] life. In Chapter 3, I explore the promise, as well as the setbacks, of the children's climate movement. In Chapter 4, I evaluate the extent to which the CRC Committee currently functions as a friend or foe to child climate activists. I recommend restructuring the COs to confront expeditiously the impact of climate change upon children. I also suggest the CRC Committee's determination in *Sacchi* could portend the Committee's future role-positive or negative- in children's climate issues. In Chapters 5-7, I demonstrate that climate change's complex nature does not detract from its potent impact upon the right to [a dignified] life, including the right to

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<sup>6</sup> CRC/C/MNG/CO/5[2017], par. 36.

culture [Bolivian Uru-Murato], the right to health and sanitation [Kiribati], and the right to protection from all forms of violence [LCB]. In Chapter 8 I provide sample Concluding Observations on “Climate Change and the Right to [a Dignified] Life for Bolivia, Kiribati and Nigeria (one of the nations on LCB), with an emphasis on the issues discussed in Chapters 5-7.

## 2. Why Children's Rights Advocates Should Care About Climate Change

### 2.1 The Impact of Climate Change on Human Civilization is Catastrophic

While refraining from labelling climate change as an existential threat, children's rights advocates have emphasized the severity of the impact of climate change on humans, and especially children. Karin Arts submitted: "Climate change is becoming ever more visible in seriously harmful consequences across the globe."<sup>7</sup> Susana Sanz-Caballero characterized climate change as "a policy issue and a threat to international peace and security [which has had] an irreversible and negative impact on human rights."<sup>8</sup> Elizabeth Gibbons observed: "Climate change is already having a disproportionate impact on 21st century children."<sup>9</sup> Katharina Ruppel-Schlichting and her colleagues pronounced: "Climate change is the biggest global threat of the 21st century. Besides women, the elderly, indigenous and disabled people, children are the poorest of the poor and the most vulnerable."<sup>10</sup>

Consistent with the perspectives of children's rights advocates, in the late nineteen eighties and early nineties, scientific researchers emphasized the catastrophic health risks posed by climate change.<sup>11</sup> Ironically, in the twenty-first century, as the symptoms of climate change became more severe, climate research became more conventional and restrained,<sup>12</sup> a development Spratt and Dunlop have characterized as unwise and dangerous.<sup>13</sup>

Presuming the accuracy of the IPCC's model predicting warming levels at 1.5 degrees Celsius,<sup>14</sup> the outcome over the course of the twenty-first century would still be bleak. "Just for starters," Spratt and Dunlop contend, "it would mean coral systems reduced to fragments, a multi-meter sea-level rise on the way, Pacific nations drowned, more lethal extreme weather, and glaciers in Antarctica passed their tipping points."<sup>15</sup> Yet the probability of maintaining warming at 1.5 degrees Celsius is virtually nil. To begin with, as of 2018, only seven signatories of the Paris Climate Accord had abided by their obligations.<sup>16</sup> Moreover, even if all signatories met their obligations, by 2100, anthropogenic-induced warming would increase beyond three degrees, and when long-term carbon-cycle feedback is added, to

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<sup>7</sup> K. Arts [2019]. "Chapter 10- Children's Rights and Climate Change," in *Children's Rights and Sustainable Development: Interpreting the UNCRC for Future Generations* [ed. by Claire Fenton-Lynn], p.216.

<sup>8</sup> S. Sanz-Caballero [2013]. "Children's Rights in a Changing Climate: A Perspective from the United Nations on the Rights of the Child," *Ethics in Science and Environmental Politics* 1, p.1.

<sup>9</sup> E. Gibbons [2014]. "Climate Change, Children's Rights, and the Pursuit of Intergenerational Climate Justice," *Health and Human Rights Journal* 19, p. 20.

<sup>10</sup> K. Ruppel-Schlichting, et. al. [2013]. "10. Climate Change and Children's Rights: An International Law Perspective," in *Climate Change: International Law and Global Governance: Volume 1: Legal Responses and Global Responsibility* [ed. by O. Ruppel, et. al.], Nomos Verlagsgesellschaft mbH, p. 349.

<sup>11</sup> C. Butler [2018]. "Climate Change, Health and Existential Risks to Civilization: A Comprehensive Review (1989-2013)," *International Journal of Environmental Research and Public Health*, p.15.

<sup>12</sup> *Ibid.*

<sup>13</sup> D. Spratt and I. Dunlop [2018]. *What Lies Beneath: The Understatement of Existential Climate Risk*, Breakthrough National Centre for Climate Restoration, Melbourne, Australia.

<sup>14</sup> IPCC [2018]. *Special Report: Global Warming of 1.5 Degrees C*. If we quickly moved to near zero emissions, it would happen. But as a local politician once informed me, "[p]eople in Syracuse [New York] don't have an appetite to make these large lifestyle changes."

<sup>15</sup> D. Spratt and I. Dunlop [2019]. *The Third Degree: Evidence and Implications for Australia of Existential Climate-Related Security Risk*, Breakthrough-National Centre for Climate Restoration, p.4.

<sup>16</sup> C. Singer, et. al. [October 12, 2018]. "The Seven Countries Actually Living Up to the Paris Climate Agreement," *Global Citizen*.

four or even five degrees.<sup>17</sup> Given the current lack of commitment to mitigating the climate crisis, a more realistic model is Xu and Ramanathan's "baseline fast" model, which predicts that by 2030, anthropogenic warming will reach 1.6 degrees Celsius, and by 2050, warming will reach a total of 3 degrees Celsius, 2.4 degrees Celsius due to anthropogenic warming plus an additional .6 degrees Celsius due to a combination of carbon-cycle and biogeochemical feedbacks.<sup>18</sup>

Unbeknownst to most governments, business sectors and communities, the consequences of warming of three degrees Celsius by 2050 are staggering,<sup>19</sup> both socio-economically<sup>20</sup> and politically.<sup>21</sup> Deadly heat conditions, land degradation and rising sea levels may lead to the displacement of a billion people.<sup>22</sup> Shortages in water availability in the dry tropics and subtropics will mean 1.8 billion to two billion people will lack access to safe drinking water and sanitation.<sup>23</sup> Food shortages will produce skyrocketing food prices.<sup>24</sup> Extreme flooding will render atolls uninhabitable,<sup>25</sup> and lead to mass migrations from populous urban areas, such as Mumbai, Bangkok, and Shanghai.<sup>26</sup> Democracies will collapse in vulnerable regions, such as Latin America, and be at risk in others, such as India, and authoritarian regimes will tighten their strongholds.<sup>27</sup> Class warfare, violent protest and political upheaval will become commonplace.<sup>28</sup> Since global warming proliferates life on the extremes, nuclear war could result,<sup>29</sup> and climate change would dramatically exacerbate nuclear war's already dire impact.<sup>30</sup>

While not contesting the science behind Spratt and Dunlop's and Xu and Ramanathan's projections, Beard and Belfield, scholars at the University of Cambridge's CSER, opt to analyze climate risk from a systems perspective. They view physiological, ecological, social, economic, technological, and cultural systems as the building blocks of human life, survival and development.<sup>31</sup> They rank threat levels based on the scale of harm done to each of the systems. An extreme threat pushes one or more of the

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<sup>17</sup> Spratt and Dunlop, pp. 7-8. Anthropogenic-induced warming triggers Earth system processes- "feedbacks"- which further increase the warming, and continue to operate even if at some point we cease emissions altogether. For example, once a critical warming threshold is exceeded, the Amazon rainforest will no longer store carbon, but instead will emit it uncontrollably. W. Steffen, et. al. [2018]. "Trajectories of the Earth System in the Anthropocene," *Proceedings of the National Academy of Sciences [US]*.

<sup>18</sup> Y. Xu and V. Ramanathan [2017]. *Well below 2 degrees: Mitigation Strategies for Avoiding Dangerous to Catastrophic Climate Changes*, Proceedings of the National Academy of Sciences, 114.

<sup>19</sup> Spratt and Dunlop, p. 4.

<sup>20</sup> *Ibid.*, pp. 12-14.

<sup>21</sup> K. Campbell, et. al. [2007]. *The Age of Consequences: The Foreign Policy and National Security Implications of Global Climate Change*. Center for Strategic and International Studies/Center for New American Security, Washington, D.C.

<sup>22</sup> Spratt and Dunlop, pp. 12-13.

<sup>23</sup> *Ibid.*, p. 13.

<sup>24</sup> *Ibid.*, p. 14.

<sup>25</sup> C. Storlazzi, et. al. [2018]. "Most Atolls Will Be Uninhabitable by the Mid-21st Century Because of Sea-Level Rise Exacerbating Wave-Driven Flooding," *Science Advances*, 4, eaap9741.

<sup>26</sup> S. Hanson, et. al. [2011]. "A Global Ranking of Port Cities With High Exposure to Climate Extremes," *Climatic Change*, 104.

<sup>27</sup> K. Campbell, n.14.

<sup>28</sup> *Ibid.*

<sup>29</sup> M. Klare [January 27, 2020]. "How Rising Temperature Increase the Likelihood of Nuclear War," *The Nation*.

<sup>30</sup> S. Starr [2009]. *Deadly Climate Change from Nuclear War: A Threat to Human Existence*.

<sup>31</sup> The Future of Life Institute [2019]. "The Climate Crisis as an Existential Threat with Simon Beard and Haydn Belfield (Podcast on August 1, 2019)."

systems outside its normal functioning.<sup>32</sup> A catastrophic threat pushes the whole set of systems outside its normal functioning.<sup>33</sup> Since systems are interconnected, if, for example, the ecological system malfunctions, a domino effect occurs, turning an extreme threat into a catastrophic one. In an existential threat, as opposed to a catastrophic threat, return to normal systems operation is onerous, if not impossible.<sup>34</sup> While an existential threat may not lead to extinction, humans likely will live in a different and inferior world.<sup>35</sup>

Beard and Belfield conclude that climate change might (or might not) only be a catastrophic threat, and not an existential one. Either way, the impact of climate change on human life will be “really bad,”<sup>36</sup> and we need to mitigate it. As Belfield admonished: “We’re not cutting emissions enough, we’re not moving to renewables fast enough, we’re not even beginning to explore possible solar geo-engineering responses ..., we’re not yet taking it seriously enough as something that could be a major contributor to the end of our civilization or the end of our entire species.”<sup>37</sup>

Without climate change mitigation, the challenges of the present will morph into catastrophic/existential crises in the future. To illustrate, consider the potential impact of displacement on children. The displacement of 575,000 children from their homes in Northwest Syria December 2019 - March 2020 severely threatened their well-being.<sup>38</sup> But what if warming of 3 degrees Celsius results in one billion people being displaced by 2050, as Spratt and Dunlop predicted?<sup>39</sup> Since at least half likely will be children,<sup>40</sup> 500 million children will be displaced in 2050, some of whom will lose their lives, while others will suffer daily indignities. No wonder UN Secretary General Antonio Guterres characterized maintaining the status quo in the face of climate change as suicide.<sup>41</sup>

## 2.2 Even if Climate Change is not an Existential Threat, It is an Existentialist One

Given humankind’s survival instincts, why do so many people persist in maintaining the status quo in the face of climate change? The answer lies in our determination to manage an existentialist threat at the expense of confronting a catastrophic one. Put another way, many people (wrongly) believe that managing an existentialist threat will make the catastrophic one disappear.

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<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> K. Piper. “Is Climate Change an ‘Existential Threat’- Or Just a Catastrophic One?,” *Vox* (June 28, 2019), p. 4.

<sup>37</sup> *Ibid.*

<sup>38</sup> UNICEF [March 15, 2020] “Almost 5 million Children Born Into War in Syria, 1 Million Born As Refugees in Neighboring Countries”.

<sup>39</sup> This is a relatively modest projection. Another study finds that 2 degrees of warming will displace more than a billion people. V. Wariaro, et. al. [2018]. *Global Catastrophic Risks*, Global Challenges Foundation, Stockholm, Sweden.

<sup>40</sup> Ruppel-Schlichting, p. 354, observed that children presently represent more than half of those affected by climate change.

<sup>41</sup> J. Pyper [2019]. “UN Chief Guterres: The status quo on climate policy ‘is a suicide,’” *Greentechmedia*, 7. Likewise, Prof. Hans Schellenhuber, founding director of the Potsdam Institute for Climate Impact Research, stated, that if we keep the status quo, “The human species will survive somehow but we will destroy almost everything we have built up over the last two thousand years.” Quoted in N.Breeze [2018]. “It’s Non-linearity, Stupid.” *The Ecologist*, 3.

Climate change is an existentialist threat in that it jeopardizes our mode of being-in-the-world.<sup>42</sup> In the prevalent anthropocentric approach to the world, the environment is a human playground.<sup>43</sup> For example, if we no longer can extract oil and gas on the surface, we engage in fracking. However, from an ethics perspective, climate differs fundamentally from the environment. While the environment is an object of ethical reflection, climate frames ethics itself.<sup>44</sup> Acknowledging the profound implications of climate change shakes up life worlds, causing substantial anxieties. As Janz described, “(w)hat is lost in climate change is ... our ecology of concepts and experiences, that make up the life-blood of our way of life.”<sup>45</sup>

Greimas’ semiotic squares concretize how climate change overhauls lifeworlds.<sup>46</sup> In Greimas’ schema, one type of opposites is countermeasures, in which X and counter-X perpetually push against each other in an act of self-becoming.<sup>47</sup> Human inclinations toward individualism, such as personal freedoms and accumulating corporate profits, and collectivism, such as environmental regulation and public health measures, are each other’s countermeasures.<sup>48</sup> So too are humanity’s existence through the lived world, and the lived world itself.<sup>49</sup> Climate change is an existentialist threat because it ultimately shakes up the applecart.<sup>50</sup> Carbon plants might be shut down to reduce carbon emissions or meat consumption might be limited to reduce methane emissions. Man must adapt to the demands of the nonhuman world or risk losing civilization.

In order to shield oneself against the shocks of climate change, the temptation is to turn climate change into an unintelligible abstraction symbolic of leftist politics and elitist culture.<sup>51</sup> Since human knowledge of climate is predominantly experiential, the particularities of the climate’s impact remain largely hidden.<sup>52</sup> As sea levels continue to rise, people fix the flooding problem by piling more sandbags and building higher walls, while climate-induced extreme weather grows unabated.<sup>53</sup> Snug within the security of their lifeworld, they cling to the perverse belief that they can use technology, which contributed to climate change in the first place, to cure its destructive impacts.<sup>54</sup>

Myers contended that to confront the realities of climate change, we need “empowered and clear-sighted democracies,” not divisiveness.<sup>55</sup> The climate-induced existentialist crisis provides an opportunity

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<sup>42</sup> S. Bein [2017]. “Chapter 6: Climate Change as Existentialist Threat: Watsuji, Greimas, and the Nature of Opposites,” in *Japanese Environmental Philosophy* [ed. by J. Callicott and J. McRae], Oxford Scholarship Online.

<sup>43</sup> B. Janz [2011]. “Watsuji, Fudo, and Climate Change,” *Journal of Global Ethics* (August 2011), p. 174.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*, p.178.

<sup>46</sup> See e.g., J. Corso [2014]. “What Does Greimas’s Semiotic Square Really Do?,” *Mosaic: An Interdisciplinary Critical Journal*, 47(1).

<sup>47</sup> Bein, *op. cit.*, n. 39.

<sup>48</sup> *Ibid.*

<sup>49</sup> *ibid.*

<sup>50</sup> *Ibid.* N. Stern [2010] proclaimed that climate change is “the greatest market failure the world has ever seen.” “The Economics of Climate Change,” *Climate Ethics: Essential Readings* [ed. by S. Gardiner, *et. al.*, Oxford University Press, New York, p. 39.

<sup>51</sup> Janz, p. 183.

<sup>52</sup> T. Myers [2013]. “Understanding Climate Change as an Existential Threat: Confronting Climate Denial as a Challenge to Climate Ethics,” *Proceedings from the 50th Societas Ethica Annual Conference 2013- Climate Change, Sustainability, and an Ethics of an Open Future*, August 22-25, 2013, Soesterberg, the Netherlands, pp. 31-32.

<sup>53</sup> As M. Heidegger explains, a hammerer does not experience a hammer as made of wood and metal. It is only when the hammer breaks that the hammerer is fully conscious of it. See *Being and Time* [Transl. by J. Macquarrie and E. Robinson], Blackwell, 1962. What will it take for the masses to understand that the climate is broken?

<sup>54</sup> Janz, pp. 178-179.

<sup>55</sup> Myers, p. 26.

to confront climate anxiety.<sup>56</sup> In generating an “authentic” response to anxiety, as Heidegger termed it<sup>57</sup>, we can grasp that by substituting a carbon-free path for the industrial order and our consumption-driven ways we can secure a healthy climate tomorrow.<sup>58</sup>

### 2.3 Children are More Frequently and Severely Impacted by Climate Change Than are Adults

Climate change poses catastrophic risks, and even if the threats are not existential, they are existentialist.<sup>59</sup> Climate change impacts the right to life and survival and development.<sup>60</sup> Since “climate change is about human suffering,” as Robinson stated,<sup>61</sup> climate change impairs the opportunity to secure a dignified life.

Climate change is life altering, and even if it affected children in the same capacity as it did adults, there still would be cause for alarm, now and in the future. But the undeniable truth is that the impact of climate change is borne more immediately and most unmercifully by the vulnerable, the poor, ethnic and racial and religious minorities, persons with disabilities, and children.<sup>62</sup> The harshest impacts of climate change occur in low and middle income countries, home to 85% of the world’s children.<sup>63</sup>

Of the 11 million children that die each year, 7.7 million of the deaths are attributed to diarrhea, malaria, neonatal infection, pneumonia, preterm delivery and lack of oxygen at birth, each of which are highly sensitive to climatic conditions.<sup>64</sup> Eighty percent of malaria deaths and thirty-three percent of malnutrition deaths occur in the most vulnerable group of children, those aged 5 or below.<sup>65</sup> Climate change increases water stress, and impedes adequate sanitation, resulting in 1.5 million children dying annually from drinking contaminated water.<sup>66</sup> Extreme flooding leads to more fatalities among children than adults.<sup>67</sup> Children displaced by climate change due to severe drought or sea-level rise experience the death of their “place identity, culture ..., land and ... customary way of life,”<sup>68</sup> precipitating higher rates of adjustment issues, depression, suicidal ideation, and suicide.<sup>69</sup>

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<sup>56</sup> *Ibid.*, p. 33.

<sup>57</sup> Heidegger, p. 68.

<sup>58</sup> Myers, pp. 26, 34.

<sup>59</sup> The WHO-UNICEF-Lancet Commission expressed its grave concern that “every child worldwide now faces existential threats from climate change ... .” <https://healthpolicy-watch.org/climate-commercial-risks-threaten-future-of-worlds-children-says-who-unicef-lancet-commission/> , p.2.

<sup>60</sup> R. Akresh [2016]. “Climate Change, Conflict and Children,” *The Future of Children* 26(1), Princeton University, p. 52.

<sup>61</sup> M. Robinson [2008]. “Foreward,” in *Climate Change and Human Rights-A Rough Guide*, International Council on Human Rights Policy, Geneva, Switzerland, p. iii.

<sup>62</sup> See e.g., Gibbons, n.6; and A. Sanson and S. Burke [2020]. “Chapter 21: Climate Change and Children: An Issue of Intergenerational Justice,” in *Children and Peace* [ed. by N. Balvin and D. Christie], Australian Psychological Society, Melbourne, Australia [“the World Health Organization estimate(s) that children will suffer more than 80% of the illnesses, injuries and deaths attributable to (climate change)”].

<sup>63</sup> Sanson and Burke, op. cit., n.60, p. 346.

<sup>64</sup> Ruppel-Schlichting, pp.349-350. For example, it is predicted that climate change will lead to a 33% increase in exposure to malaria during the course of the 21st century. *Ibid.*, p. 352.

<sup>65</sup> Sanz-Caballero, p.4.

<sup>66</sup> *Ibid.*, p. 5.

<sup>67</sup> Gibbons, p.21.

<sup>68</sup> S. Burke, et. al. [2018]. “The Psychological Effects of Climate Change on Children,” *Current Psychiatry Reports*, p. 35.

<sup>69</sup> *Ibid.*

Even where children survive the impacts of climate change, such as infant malnutrition, lost months or years of elementary education, or the trauma of separation from caregivers, their life course trajectories are negatively altered.<sup>70</sup> Currently, about one-quarter billion children under five years old in low- and middle-income nations are at risk of falling short of their developmental potential, and these numbers will continue to grow as climate change pushes more children into poverty.<sup>71</sup> Extreme environmental stressors profoundly scar children's bodies and minds, trampling their hopes and dreams, and bringing them ever closer to the living dead.<sup>72</sup> Sudden-onset disasters make children more susceptible to sexual abuse, exploitation and trafficking,<sup>73</sup> child labor,<sup>74</sup> and recruitment into armed forces,<sup>75</sup> jeopardizing their right to a dignified life. Slow-onset climate change processes fester frustration and increase the risk of children's exposure to domestic violence.<sup>76</sup> Climate change serves as a "threat multiplier" for political strife, as exemplified by the connection between the severe drought in Syria between 2006-2011 and the Arab Spring,<sup>77</sup> posing a serious threat to children's well-being.<sup>78</sup> Climate induced- epigenetic changes in children may impair their capacity to care for the next generation, and since subsequent generations of children are likely to live in a world of rapidly spiraling extreme weather, leading to even more epigenetic changes, the future of human development is in jeopardy.<sup>79</sup>

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<sup>70</sup> Gibbons, pp.21-22.

<sup>71</sup> WHO-UNICEF-Lancet Commission, p.2.

<sup>72</sup> Gibbons, p. 20.

<sup>73</sup> *Ibid.*, p. 22.

<sup>74</sup> Ruppel-Schlichting, *et. al.*, pp. 369-371.

<sup>75</sup> C. Bakker [2020]. " Chapter 22: Climate Change and Children's Rights," in *The Oxford Handbook of Children's Rights Law* [ed. by J. Todres and S. King], Oxford University Press, p. 452.

<sup>76</sup> Sanson and Burke, p. 348.

<sup>77</sup> Gibbons, p.23.

<sup>78</sup> Akresh, p. 52

<sup>79</sup> Swanson and Burke, p. 346.

### 3. The Promise and Setbacks of the Children’s Climate Movement - “Our House is on Fire. I Don’t Want Your Hope ... I Want You to Panic.” [Greta Thunberg]

Children alive today have never walked the Earth when climate change was a non-issue. Born *tabula rasa*, humanism and environmentalism, not industrialism and consumptionism, comported with their comprehension of the natural world. Despite being socialized into the trappings of capitalist society, many children nonetheless became more climate conscious than their parents. The scientific realities of climate matter to children not only for ethical reasons, but for pragmatic ones as well, given that most will be alive in 2030, 2050, and even 2100.

The willingness of youth climate activists to follow the science is heartening. U.S. youth climate activists, for example, have heeded the warning in the IPCC’s 2018 report regarding the repercussions of 1.5 degrees Celsius global warming by 2030. In an effort to foster urgent climate action, Zero Hour dispels the notion of climate change as an abstract future potentiality by showing individuals how climate change presently and personally affects them. The U.S. Youth Climate Strike focuses on implementing fundamental federal policy changes, such as mandatory K-8 education on climate change and climate justice, declaring the climate crisis as a National Emergency, and, along with the Sunrise Movement, campaigning for the Green New Deal. In promoting the GND, the Sunrise Movement dialogues both with communities and U.S. Congress members, including Representative Ocasio-Cortez and Senator Markey, who jointly introduced the GND into both Houses of Congress. Assuming *arguendo*, the U.S. Congress enacted the GND, global warming still would rise 1.5-2 degrees Celsius by 2030. The threat to [a dignified] life would remain extreme, but likely would fall short of catastrophic. However, even if in the November 2020 elections Democratic candidates ousted enough incumbent Republican Senators to control both Congressional houses, it is unlikely there would be enough votes to pass the GND, keeping the U.S. on a path toward catastrophe.



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The judicial path of the U.S. youth climate movement has been equally frustrating. In 2016, twenty-one American children, with the assistance of Our Children’s Trust, filed a law suit, *Juliana v. the United States*, alleging that the federal government’s inaction on climate change violated their Fifth Amendment constitutional rights to “life, liberty, and property.”<sup>80</sup> Hon. Ann Aiken, Oregon District Court Judge, ruled the case could proceed on the groundbreaking notion of a “fundamental right to [a] climate

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<sup>80</sup> *Juliana*, 339 F. Supp. 1062 (D. Or. 2018) at p.1070.

system capable of sustaining life.”<sup>81</sup> In reaching her decision, Judge Aiken pronounced: “[W]here a complaint alleges governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet’s ecosystem, it states a claim for a due process violation. To hold otherwise would be to say that the Constitution affords no protection against a government’s knowing decision to poison the air its citizens breathe or the water its citizens drink.”<sup>82</sup>

In reviewing the District Court’s Interlocutory Orders, Ninth Circuit Justice Andrew Hurwitz drew upon Barry McGuire’s 1965 song warning that “we [are] on the eve of destruction,” and opined that the youth plaintiffs “presented compelling evidence that climate change has brought that eve nearer.”<sup>83</sup> Despite his grave concerns about the impact of climate change, Judge Hurwitz, in his majority opinion, concluded the plaintiffs must seek redress from the executive or legislative branches or the electorate at large.<sup>84</sup> In her dissent, Justice Josephine Staton launched a scathing attack on the U.S. government’s position: “[T]he government accepts as fact that the United States has reached a tipping point [with climate change] crying out for a concerted response—yet presses ahead toward calamity. It is as if an asteroid were barreling toward Earth and the government decided to shut down our only defenses. Seeking to quash this suit, the government bluntly insists that it has the absolute and unreviewable power to destroy the Nation.”<sup>85</sup> Holding that the “plaintiffs have a constitutional right to be free from *irreversible and catastrophic climate change*,”<sup>86</sup> Justice Staton concluded: “If plaintiff’s fears [based on science], backed by the government’s *own studies*, prove true, history will not judge us kindly. 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>87</sup> The *Juliana* case was a symbolic victory for the youth plaintiffs, but symbols do nothing to impede the path toward catastrophic warming.<sup>88</sup>

Children instituting climate change litigation in other jurisdictions also have had mixed results. In *Demanda Generaciones Futuras v. Minambiente*,<sup>89</sup> twenty-five youths between the ages of 7 and 25 filed an action seeking to enforce Colombia’s obligation to reduce deforestation and GHG.<sup>90</sup> In overturning the lower courts’ decisions, the Colombian Supreme Court found that the youths established a link between climate change and their life expectancy, as well as their right to a dignified life.<sup>91</sup> The Supreme Court ordered the implementation of plans to construct an intergenerational pact for the life of the Colombian Amazon which targeted reducing deforestation to zero and GHG emissions.<sup>92</sup>

In the *People’s Climate Case*, ten families globally and the Swedish Sami Youth Association filed an action against the European Parliament and the EU Council alleging a violation of their right to life in

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<sup>81</sup> *Ibid.* at p.1097.

<sup>82</sup> *Juliana*, 217 F. Supp.3d 1224 (D. Or. 2016) at 1250.

<sup>83</sup> *Juliana*, No. 18-36082, D.C. No. 6:15-cv-01517AA (US. 9th Cir. 2020) at p. 11.

<sup>84</sup> *Ibid.*, p. 32. There is no possibility of obtaining redress from “climate change is a Chinese hoax” Trump or the largely pro-big oil Republicans who currently hold the majority in the Senate.

<sup>85</sup> *Ibid.*, pp. 32-33.

<sup>86</sup> *Ibid.*, pp. 34, 45.

<sup>87</sup> *Ibid.*, p. 64. The decision is currently being appealed to the Ninth Circuit en banc.

<sup>88</sup> J. Mintz [2020] argues that the *Juliana* majority could have constructed narrower relief, such as a federal phase-out of fossil fuels. “They Threw Up their Hands: Observations on the US Ninth Circuit Court of Appeals’ Unsatisfying Opinion in *Juliana v United States*,” *Journal of Energy and Natural Resources Law*, 38(2), pp. 201-204.

<sup>89</sup> STC4360-2018, no. 11001-22-03-000-2018-00319-01.

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

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

that the 2030 target of reducing GHG by 40% will not halt devastating climate changes from unfolding.<sup>93</sup> Sanna Vannar, an indigenous Sami reindeer herder, testified: “For Sami youth, climate change ... affect[s] our daily lives: wildfires hitting the Sami Grazelands, reindeer dying due to lack of food, and emotional stress created by the uncertainty of climate conditions becoming my generation’s biggest health problem.”<sup>94</sup> In rejecting the plaintiff’s allegations, the European General Court found that Vannar, and the other plaintiffs, were not “directly and individually” affected by the EU’s climate policies.<sup>95</sup> Bolstered by the support of Greta Thunberg, the plaintiffs filed an appeal on July 23, 2019, and a subsequent application with the Court of Justice on October 18, 2019.<sup>96</sup> In Section 4.3, I discuss the pending 2019 OPIC Complaint filed by 16 children internationally in *Sacchi*.

Left unchecked, climate change will have a progressively catastrophic impact on the world, spiraling to a point where humans have virtually no control over its trajectory. Along the way, in 2030, 2050, 2100, it will disproportionately affect the right to [a dignified] life of the most vulnerable, including children. Yet we can avert the harshest ramifications. The children have led the way in showing the solutions, measures such as net zero carbon emissions and 100% renewable energy production. But the time table matters. The calculus on how many children’s lives are lost, how many children suffer, and whether climate processes do indeed become irreversible depends on whether we institute these measures by 2030- the U.S. GND’s target goal, 2050- the European Green Deal’s target goal, or at a later date. How do we convince the electorate at large, as Judge Hurwitz urged, that it is preferable to make moderate sacrifices today and salvage much of our civilization rather than severe sacrifices later and still only see the remnants of life as we now know it?

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<sup>93</sup> Case T-330/18 (Gen Ct. 2nd Ch. 2019), par. 18.

<sup>94</sup>“People’s Climate Case: Court Acknowledges Climate Change is Affecting Everyone But Dismisses the Case [2019] Retrieved on June 1, 2020 from <https://peoplesclimatecase.caneurope.org/2019/05/peoples-climate-case-court-acknowledges-climate-change-is-affecting-everyone-but-dismisses-the-case/> .

<sup>95</sup> Case T-330/18, par. 28.

<sup>96</sup> Case C-565/19P (CJEU pending). Several cases involving adult litigants are instructive. In *Netherlands and Stichting Urgenda*, No. 19/00135 (Sup. Ct., Civ. Div. 2019), the Supreme Court confirmed the lower court orders directing the Netherlands, by the end of 2020, to reduce GHG by at least 25% compared to 1990. See generally E. Stein and A. Castermans, “Case Comment-Urgenda v. the State of the Netherlands: The “Reflex Effect”- Climate Change, Human Rights, and the Expanding Definitions of the Duty of Care,” *McGill Journal of Sustainable Development Law-RDDDM* 13(2). In a pending case, *VZW Klimaatzaak v. Kingdom of Belgium & Others*, the plaintiffs seek reductions of 40% below 1990 levels by 2020 and 87.5% below 1990 levels by 2050. See also *Leghari v. Federation of Pakistan* [2015] W.P. No. 25501(Lahore High Court Green Bench Pakistan) [The Court ordered the appointment of government councils to ensure Pakistan honors its commitments to mitigate the impact of climate change].

## 4. The CRC Committee on Climate Change- Is the Committee Using an Elephant Squirt to Extinguish the Flames in a Burning House?

Film has overused the expression bring a knife to a gun fight to highlight a foolhardy state of being underprepared. Besides, I am not a fan of weapons, preferring to furnish my children with elephant squirts rather than water guns. Given that climate change is a catastrophic threat to the [dignified] life of children, is the CRC Committee using an elephant squirt to extinguish the flames in a burning house?

### 4.1 Synopsis of the CRC Committee's Shortcomings to Date

Although the US President's Advisory Committee classified GHG as a matter of "real concern" as early as 1965, and the IPCC was formed in 1988 to gather and assess climate change evidence, the relative novelty of the field can excuse the CRC framers' failure to discuss climate change in the 1989 Convention. But what has the CRC Committee done in the ensuing three decades? Notwithstanding reports to the contrary, the 2016 CRC Day of Discussion on the Environment rarely discussed the impact of climate change on children. There are CRC OPs on the involvement of children in armed conflict, on the sale of children, child prostitution and child pornography, and on a communications procedure, but there is no OP on children and climate change. There are currently 24 CRC GCs and a 25th on "Children's Rights in Relation to the Digital Environment" is imminent, but there is no GC on "Children's Rights in Relation to the Climate Impacted Environment."<sup>97</sup> The CRC Committee's failure to draft a GC on climate change, despite discussing the idea for half a decade, is damaging because procrastination belies urgency. The UN designated climate change as Goal 13 in the 2030 Agenda for Sustainable Development, yet a decade away, climate change still assumes only a peripheral role within the CRC.<sup>98</sup> As I discuss in 4.2, restructuring the CRC COs to highlight the urgent need to mitigate the impact of climate change on children is a good starting point for remedying these shortcomings.

### 4.2 Restructuring the COs to Confront Expediently the Impact of Climate Change upon Children

Given the impact of climate change on children,<sup>99</sup> and children's leadership role in the climate movement, the CRC Committee's treatment of climate change in its COs falls flat. Karin Arts observed that the CRC Committee explicitly mentioned climate change in only four of 24 COs in 2015 and in only seven of 27 COs in 2016.<sup>100</sup> Despite Arts' call for the CRC Committee to feature climate change in its COs,<sup>101</sup> my examination of the COs from 2017-March 2020<sup>102</sup> reveals minimal improvement in this area. The CRC Committee mentioned climate change in 26 of 61 COs, including eight of 21 COs in 2017, six of 16 COs in 2018, seven of 15 COs in 2019, and five of nine COs from January to March 2020. Eleven of the 26 COs in which the CRC Committee discussed climate change involved developing island nations, which means that the Committee discussed climate change in the COs of less than a quarter of

<sup>97</sup> This is significant because the CRC Committee uses the GCs both to elaborate on Convention provisions, and to address subjects with increasing post-1989 impact on children, such as digital technology, and-one would think-climate change.

<sup>98</sup> Indeed, Australia asserts that the CRC has no jurisdiction to safeguard children from climate change. CRC/C/AUS/CO/5-6 [2019], par. 40.

<sup>99</sup> For example, if Australia warmed three degrees, the Great Barrier Reef likely would disappear, there would be food shortages in the Murray-Darling Basin, and residents would be forced to migrate from low-lying areas, Spratt and Dunlop, p. 4, and combined, these occurrences would impact upon at least two million children.

<sup>100</sup> K. Arts, pp. 229-230.

<sup>101</sup> *Ibid.*, p. 232.

<sup>102</sup> Presently, there are no CRC COs beyond April 2020.

non-island nations. Given the global consequences of climate change, this defies logic. If you want to mitigate climate change in Palau or the Marshall Islands, both of which produce negligible GHG emissions, you are obligated to confront the largest GHG emitters, like China. Yet the CRC Committee failed to discuss climate change in 35 COs, including the COs of significant GHG emitters- e.g. Italy, Portugal, Argentina, Norway, as well as the COs of climate-devastated nations- e.g., Lao, Angola, and El Salvador. While the CRC Committee's increased environmental focus in the COs is encouraging,<sup>103</sup> climate is the environment, but it is so much more, and the CRC Committee should refrain from conflating the two in its treatment of them in the COs. Appendices D and E summarize the CRC's analysis of climate change in the COs between 2017 and March 2020.

The CRC Committee partially adheres to Arts' additional recommendation that climate change issues be systematically placed within the COs<sup>104</sup> in that discussion of climate change in the COs is found within a subsection of basic health and welfare. Nonetheless, the CRC Committee's current approach to climate change in its COs has multiple flaws: (1) as stated above, in many COs, the CRC Committee fails to discuss climate change; (2) even when the CRC Committee discusses climate change, it virtually never spotlights issues relating to the business sector or children's participation; (3) given that climate change infringes primarily on the right to [a dignified] life, and secondarily on a panoply of other CRC rights, it merits a separate section within the COs; and (4) routinely excluding climate change from the priority issues section delegitimizes its status as a catastrophic and existentialist threat.

#### 4.2.1 Climate Change and the Business Sector

The CRC Committee discussed the nexus between children's environmental rights and the business sector in 18 of the 61 COs between 2017 and March 2020. However, even in these 18 COs, climate change received no mention.

Monitoring business activities is essential because the political economy of capitalism and the capitalist mode of production are inherently anti-environmental and anti-climate. As Marx observed, business subordinates social and natural relationships to the "treadmill" of capital accumulation.<sup>105</sup> In the nineteenth century, Marx envisioned this metabolic rift in the case of soil erosion. The preeminence of capital accumulation led to the over-exploitation of soil and its incurable erosion, precipitating an agricultural crisis.<sup>106</sup> The same principle applies today when fossil fuel producers' prioritization of capital accumulation leads to GHG, triggering a climate crisis.<sup>107</sup> Capitalism not only undervalues nature's vital contribution to the production of wealth, it renders it invisible within the formal abstraction of social labor time.<sup>108</sup>

The recklessness of capitalism is exemplified in the process of "extreme energy," such as hydraulic fracturing ["fracking"].<sup>109</sup> Since the value of natural resources is excluded from the capitalist's calculus, those resources easiest to extract are exploited until depletion.<sup>110</sup> But given the capitalist's

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<sup>103</sup> The CRC Committee has discussed environmental issues in more than two-thirds of its 2017-March 2020 COs.

<sup>104</sup> *Ibid.*

<sup>105</sup> M. Crook and D. Short [2014]. "Marx, Lemkin and the Genocide-Ecocide Nexus," *The International Journal of Human Rights*, 3, pp. 6-7.

<sup>106</sup> *Ibid.*, p. 8.

<sup>107</sup> Ninety fossil-fuel and cement producers were responsible for 63% of the GHG emitted from 1751-2010. R. Heede [2014]. "Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854-2010," *Climatic Change*, 122, pp. 229-241.

<sup>108</sup> Crook and Short, pp. 10-11.

<sup>109</sup> *Ibid.*, p. 12. In NYS, indigenous peoples politically organize against fracking due to its potential to destroy their land and their culture.

<sup>110</sup> *Ibid.*

treadmill of accumulation, his pursuit of energy does not stop there. The capitalist next fractures rocks deep beneath the earth's surface to access trapped fossil fuel deposits.<sup>111</sup> The problem is that fracking releases abundant natural gas, and though natural gas emits half the carbon of coal,<sup>112</sup> it also releases leaked methane, which ensnares twenty to twenty-five times more heat in the atmosphere than carbon, creating massive increases in GHG emissions.<sup>113</sup>

An inherent tension exists between CMOP and climate mitigation efforts. The CRC Committee must underscore the State's due diligence obligation to promulgate, implement and enforce a regulatory framework which ensures the business sector complies with international climate mitigation standards.<sup>114</sup> Furthermore, when a State institutes an adequate regulatory apparatus, the CRC Committee must condemn any retrogressive measures, *i.e.*, *de jure* or *de facto* deregulation. Brazilian President Jair Bolsonaro's obliteration of regulations promulgated to restrict companies from deforesting the Amazon, which in a healthy state traps up to one-fourth of the world's carbon dioxide, constitutes an example of impermissible *de jure* deregulation. To avoid *de facto* deregulation of climate protection measures, the CRC Committee must mandate that States scrutinize business activities on an ongoing basis to ensure continued compliance with GHG emissions standards.<sup>115</sup>

#### 4.2.2 Children's Participation in Climate Mitigation and Adaptation

The CRC Committee highlighted children's participation in environmental issues in the "respect for the views of the child" subsection in seven of its 61 COs between 2017 and March 2020. In these seven COs, climate change only received mention in two instances.<sup>116</sup> Given the pivotal role children have played in the climate movement to date, from Zero Hour<sup>117</sup> to the Sunrise Movement<sup>118</sup> to Alexandria Villaseñor's Earth Uprising<sup>119</sup> to Greta Thunberg's Fridays for the Future<sup>120</sup>, from *Juliana*<sup>121</sup> to *Demanda Generaciones Futuras v. Minambiente*<sup>122</sup> to the Swedish Sami Youth Association in the *People's Climate Case*<sup>123</sup> to *Sacchi*,<sup>124</sup> the CRC Committee's decision to ignore children's contributions in

<sup>111</sup> National Geographic [2013]. "How Hydraulic Fracturing Works." [Video].

<sup>112</sup> This is the statistic of the Natural Gas Supply Association.

<sup>113</sup> Council of Canadians [2017]. "Fracking and Climate Change." Accessed on June 18, 2020 from [canadians.org/fracking](https://canadians.org/fracking). Fracking is a water-intensive process, potentially contributing to extreme water shortages.

<sup>114</sup> In its 2019 COs to Cote d'Ivoire, the CRC Committee recommended the State: "(a)dopt and implement regulations to hold the business sector accountable for complying with international standards, including on ... the environment, that are relevant to children's rights." CRC/C/CIV/CO/2, par. 16(a). The CRC Committee must fortify this language in COs on the business sector and climate.

<sup>115</sup> The CRC Committee's monitoring language in environmental cases serves as a model in climate change cases. For example, in its 2017 Concluding Observations to Malawi, the CRC Committee recommended that the State "(i)nclude provisions in the draft mines and minerals bill that require environmental and health monitoring at all stages of the mining process and assessment of the impacts of mining operations on children's rights to water, food, health and a clean environment." CRC/C/MWI/CO/3-5, par. 12(a).

<sup>116</sup> The applicable provisions from the 2019 COs to Australia and the 2020 COs to Hungary are set forth in Appendix E.

<sup>117</sup> [thisiszerohour.org](https://thisiszerohour.org)

<sup>118</sup> [sunrisemovement.org](https://sunrisemovement.org).

<sup>119</sup> [earthuprising.com](https://earthuprising.com) .

<sup>120</sup> [fridaysforfuture.com](https://fridaysforfuture.com) .

<sup>121</sup> No. 18-36082, D.C. No.6:15-cv-01517-AA (9th Cir. 2018).

<sup>122</sup> STC4360-2018, no. 11001-22-03-000-2018-00319-01.

<sup>123</sup> Case T-330/18 (Gen Ct. 2nd Ch. 2019).

<sup>124</sup> CRC Committee pending cases 104/2019 Argentina, 105/2019 Brazil, 106/2019 France, 107/2019 Germany and 108/2019 Turkey.

the CO's is a lost opportunity to pressure States to follow in their footsteps. As I explain below, the predominantly post-hegemonic character of children's climate organizations, as opposed to the predominantly hegemonic character of capitalist organizations, allows children to focus relentlessly on the global climate crisis.

Kioupkiolis succinctly describes the fundamental distinction between the politics of hegemony<sup>125</sup> - "hierarchical organization, representation, unification, the state and ideology"<sup>126</sup> - and the politics of post-hegemony<sup>127</sup> - "horizontal, leaderless, participatory, diverse, networked, and opposed to the state, global capitalism and ideological closures."<sup>128</sup> Hegemony and post-hegemony are ideal types and, in practice, organizations gravitate, more or less strongly, toward one form or another, *i.e.*, they are predominantly hegemonic or predominantly post-hegemonic.<sup>129</sup>

Shunning the particularistic interests of hegemonic institutions, predominantly post-hegemonic organizations pursue universal goals. For example, Habashi describes how Palestinian children transcended the ineffective regional and national approaches of older Palestinians by using the agency of religion to facilitate global solidarity and resist global hegemony.<sup>130</sup> As another example, Varadan recounts how teenage survivors of a high school shooting in Parkland, Florida formed a predominantly post-hegemonic movement, *Never Again*, that damaged the reputation of the National Rifle Association, a hegemonic sacred cow in conservative American politics, and expedited the enactment of concrete gun control reforms.<sup>131</sup> By contrast, when children are tied to the fates of their parents, and fail to mobilize an autonomous post-hegemonic movement, the status quo persists. For example, Horst and Gitz-Johansen argue that since Danish ethnic minority children were unable to establish a post-hegemonic multicultural movement, their educational fate remained tied to the monocultural hegemony implicit in the deprivation paradigm.<sup>132</sup>

The children's climate movement is a loose collection of post-hegemonic organizations opposed to the territoriality and competitive practices of hegemonic organizations. In examining the websites of Zero Hour, Earth Uprising, and Fridays for Future, I distilled three working principles which are central to the movement's effectiveness in grappling with climate mitigation. First, the movement is inclusive, and welcomes children of all genders, ethnicities, cultures and backgrounds. Second, unleashed from the

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<sup>125</sup> See *e.g.*, A. Gramsci [1971]. *Selections from the Prison Notebooks* [ed. and trans. by Q. Hoare and G. Smith], London: Lawrence and Wishart.

<sup>126</sup> A. Kioupkiolis [2018]. "Movements Post-hegemony: How Contemporary Collective Action Transforms Hegemonic Politics," *Social Movement Studies*, 17:1, pp. 99-100.

<sup>127</sup> See *e.g.*, S. Lash [2007]. "Power After Hegemony. Cultural Studies in Mutation?" *Theory, Culture and Society*, 31, pp. 43-65.

<sup>128</sup> Kioupkiolis, pp. 99-100.

<sup>129</sup> *Ibid.*, p. 110. Earth Uprising reflects Villasenor's post-hegemonic vision: "I see more of the structures that society has put in place. And that's why my generation has been so impactful with the climate movement. We're organizing outside of the structures that adults work in. Since getting involved, I just see how the system is broken, and it's one of the things that needs to change." C. Kormann [2019]. "New York's Original Teenage Climate Striker Welcomes a Global Movement," *The New Yorker*.

<sup>130</sup> J. Habashi [2011]. "Children's Agency and Islam: Unexpected Paths to Solidarity." *Children's Geographies*, 9(2), p. 142.

<sup>131</sup> S. Varadan [2018]. "Evolving Capacities of Children: Teenagers Lead Ant-Gun Law Protests in America," <https://leidenlawblog.nl/articles/evolving-capacities-of-children>, pp. 2-3. The Never Again movement inspired the proliferation of children's movements world-wide, including Thunberg's decision to organize with other children to combat the international climate crisis.

<sup>132</sup> C. Horst, and T. Gitz-Johansen [2010]. "Education of Ethnic Minority Children in Denmark: Monocultural Hegemony and Counter Positions," *Intercultural Education*, 21(2), pp. 137-151.

fetters of nationalism and capitalism, the movement promotes international cooperation and an equitable division of resources. A central mantra of the movement is that climate change does not respect man-made boundaries. Third, in contrast to the tendency of States and corporations to spin scientific findings for purposes of political or economic expediency, the movement has a symbiotic relationship with science, neutralizing any existentialist issues. Given that few children have the knowledge to determine changes in the cryosphere or to simulate climate variations, the movement respects the division of labor between child climate activists and (predominantly) adult scientists.<sup>133</sup>

Children are not only leaders in top-down climate movements, but also in bottom-up community climate projects. Children growing up in the midst of climate-related disasters use their first-hand knowledge to design and implement plans to enable their communities to adapt to climate threats. For example, in the Philippines, children persuaded community planners to relocate their school outside of a climate-induced flood zone.<sup>134</sup> As an additional example, in Indonesia, children promoted growing climate-resistant crops.<sup>135</sup> In order to respond effectively to a State's climate actions/inactions, it is critical that the CRC Committee incorporates the views of children on climate mitigation and localized climate adaptation needs.

#### 4.2.3. In the Context of Climate Change, the Right to [a Dignified] Life Trumps Best Interests

No phenomenon escapes the grasp of climate change. It intensifies threats to all human rights: civil and political, economic, social and cultural. Like the right to life itself, climate change is weighty and enigmatic, and ill-fitting with CRC orthodoxy. Departing from Gibbons,<sup>136</sup> I argue that in the context of climate change, even if rarely elsewhere, e.g. nuclear warfare or a pandemic, the right to [a dignified] life eclipses BIC.<sup>137</sup>

The CRC Committee considered the relationship between BIC and the right to life as follows: "In the assessment and determination of the child's best interests the State must ensure full respect for his or her inherent right to life, survival and development."<sup>138</sup> The imposition of a negative, but not a positive, obligation toward the right to life is insufficient for mitigating the impact of climate change upon children. Under a BIC analysis, the State has no duty to maintain warming at one-and-a-half degrees Celsius or to engage in diplomacy to secure global cooperation on climate issues.

Cantwell's critique of best interests further demonstrates why evaluating climate actions in terms of BIC is obsolete, inappropriate or even harmful.<sup>139</sup> First, the human rights framework embodied in the CRC empowers children without risking counterproductive paternalism.<sup>140</sup> For example, Thunberg

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<sup>133</sup> In accordance with CRC article 5 capacities, we should nonetheless respect and listen to the views of child scientists.

<sup>134</sup> J. Lawler, and M. Patel [2012]. "Exploring Children's Vulnerability to Climate Change and their Role in Advancing Climate Change Adaptation in East Asia and the Pacific," *Environmental Development*, 3, pp. 130-132.

<sup>135</sup> *Ibid.*, pp. 133-134.

<sup>136</sup> Gibbons, p. 21, labels the best interests of the child as the overarching principle in analyzing the impact of climate change."

<sup>137</sup> The *Sacchi* plaintiffs also focused primarily on the right to life, and only gave token consideration to best interests. See Complaint pars. 260-275, and 301-308.

<sup>138</sup> GC 14, par. 42.

<sup>139</sup> N. Cantwell [2018]. "Chapter 5: Are 'Best Interests' a Pillar or a Problem for Implementing the Human Rights of Children," in *The United Nations Convention on the Rights of the Child: Taking Stock After 25 Years and Looking Ahead* [ed. by T. Liefgaard and J. Sloth-Nielsen], Brill, p. 62. Cantwell criticizes the CRC Committee for wasting an opportunity in CRC GC 14 to "determine precisely how and when recourse to [best interests] actually contributes significantly to safeguarding [the rights of children]." *Ibid.*, p. 64.

<sup>140</sup> *Ibid.*, pp. 64-66.

overcame her angst over climate change by fighting for her right to [a dignified] life through the climate movement, an opportunity that a paternalistic best interests evaluation likely would have denied her. Second, BIC often is used as a ruse to block children from information on controversial topics, e.g., sexuality and gender diversity.<sup>141</sup> Climate change impacts upon a child's right to life, and consistent with CRC article 42, children should know about the nature of climate change and its consequences. Third, high-income countries and low and middle-income nations differ in their conceptions of best interests in climate change cases. In contrast to BIC, the right to life more objectively measures the impact of climate change upon children. Fourth, in GC 14, the CRC Committee states: "In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions."<sup>142</sup> Cantwell's anti-best interest sentiments on inter-country adoption apply equally well to climate issues: "[H]ow can best interests possibly be seen as the determining criterion for what is supposed to be, precisely, a 'definitive and irreversible' life-changing decision."<sup>143</sup>

Given the irreversibility of climate change, climate actions are a matter of life and death, and the right to a [dignified] life uniquely captures children's well-being. Thus, within the context of climate change, the three-fold typology typically reserved for BIC informs the right to life.<sup>144</sup> The right to life is a substantive right, and incorporates the right to a dignified life, including the right to survival and development. The right to life is an interpretive legal principle, and where there are multiple possibilities, one should choose the interpretation that advances the child's right to [a dignified] life, e.g., reduced GHG emissions. In promulgating climate regulations, one must explicitly consider the child's right to life, particularly in juxtaposition to economic and political expediency.

Drawing once more upon Cantwell, in analyzing climate situations, one should conduct a secondary BIC analysis only to fill-in the gap(s) in rights provisions to ensure justice for children.<sup>145</sup> Consider, for example, a deportation case where a court finds that the climate-induced conditions in the receiving state do not yet violate a child's right to a [dignified] life. In this situation, the court should determine the BIC by examining connections to the sending state, and prospects for a continued [dignified] life in the receiving state.<sup>146</sup> Due to the slow-onset effects of climate change, this two-step right to life / BIC analysis may occur somewhat frequently in deportation cases.

#### 4.2.4 The Call for a Distinct Section in the COs on Climate Change and the Right to [a Dignified] Life

The CRC Committee stated: "Environmental interventions should, *inter alia*, address climate change, as this is one of the biggest threats to children's health and exacerbates health disparities. States should, therefore, put children's health concerns at the centre of their climate change adaptation and mitigation strategies."<sup>147</sup> Consistent with the CRC Committee's declaration, in those State COs which contain a subsection on the "impacts of climate change on the rights of the child," this subsection is placed adjacent to the "environmental health" subsection, where applicable, and within the section on

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<sup>141</sup> *Ibid.*, p. 66.

<sup>142</sup> GC 14, par. 84.

<sup>143</sup> Cantwell, p. 69.

<sup>144</sup> GC 14, par. 6 (a)-(c).

<sup>145</sup> Cantwell, pp. 69-70.

<sup>146</sup> Ping-ponging a child from state to state is contrary to the child's best interests. Moreover, foreshadowing the message in the *Teitiotā* case in Chapter 6, in grappling with long-term climate-induced immigration, it is absurd to deport a child who is a life-long residence of a state to an island that likely will drown this century under steadily rising sea levels.

<sup>147</sup> GC 15, par. 50.

basic health and welfare. I contend that the CRC Committee's approach is too narrow. Although climate impacts health, first and foremost it assaults the CRC rights to survival and development (article 6(2)) and to life itself (article 6(1)) more than any other phenomenon except nuclear war.<sup>148</sup> Under the rubric of the right to [a dignified] life, climate change threatens the full gamut of CRC rights including the right to protection from all forms of violence (article 19), the right to an education (articles 28 and 29), the right to an adequate standard of living (article 27), the right to special care if disabled (article 23), the right to protection from economic or sexual exploitation (articles 32, 34, 36), the right to water, sanitation and hygiene (article 24), the right to culture (article 30), and the right to physical and mental health and nutrition (article 24).<sup>149</sup>

Conceptualizing climate change as a catastrophic threat to [a dignified] life, as well as an existentialist threat, foreshadows the restructuring of the CRC Committee's CO's. First, since climate change knows no borders, and is a universalist threat, each and every CO must contain a distinct section on "Climate Change and the Right to Life." Second, since the international community must confront the climate crisis expeditiously, the CRC Committee must feature climate change as a priority issue. Specifically, the CRC Committee must link the main issues discussed in the "Climate Change and the Right to Life" section to the "Main Areas of Concern and Recommendations" section, which appears near the beginning of the COs. Failure to highlight the "house is on fire" marginalizes climate mitigation efforts. Third, as explained in 4.2.2 and 4.2.3, mitigation of and adaptation to climate change requires the business sector to curtail its carbon and methane emissions, and the children to maintain, and grow, their "top down" climate movements and "bottom up" community climate projects. Accordingly, subsections on the business sector and the participation of children must habitually appear within the "Climate Change and the Right to Life" section.<sup>150</sup> In addition, consistent with the goal of ensuring that States confront the climate crisis, the Committee should add other subsections as needed, either on a uniform permanent basis akin to the business sector and participation of children's subsections,<sup>151</sup> or on a case-by-case basis contingent on a nation's situation during a particular reporting cycle.

Where form and content are separable, such as in the CO's, the form determines the shape of the textual contents.<sup>152</sup> The proposed structure of the climate change section is necessary to underscore the fact that climate poses an imminent threat to the [dignified] life of all children.

#### **4.3 CRC OPIC as a Vehicle Toward Reducing GHG Emissions: Sacchi, et. al. v. Argentina, Brazil, France, Germany and Turkey**

In September 2019, sixteen children filed an OPIC Complaint alleging that the five respondent States had violated CRC articles 6, 24, and 31(2) by "recklessly causing and perpetuating life-threatening climate change [and failing] to take necessary preventive and precautionary measures to respect, protect and fulfill the petitioner's rights."<sup>153</sup> The right to life assumed a central position in the petitioner's arguments: "Each respondent is exacerbating the deadly and foreseeable consequences of climate

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<sup>148</sup> Nuclear war poses a greater existential threat than climate change because it astronomically magnifies the impact of climate change. See e.g., A. Jha [2006]. "Climate Threat from Nuclear Bombs," *The Guardian Weekly*.

<sup>149</sup> Arts, pp. 222-224.

<sup>150</sup> For the sake of visual clarity, an outline of the proposed structure of the Climate Change Section is set forth in Appendix G.

<sup>151</sup> For example, climate change and the role of civil society.

<sup>152</sup> B. Messick [1996]. *The Calligraphic State: Textual Domination and History in a Muslim Society*, University California Press, p. 237. By contrast, where form and content are inseparable, such as in spiral texts, textual contents determine form. *Id.*

<sup>153</sup> Sacchi, Complaint, p. 5.

change.”<sup>154</sup> They established the bar for a violation of the right to life as “depraved indifference,” “reckless endangerment,” or *dolus eventualis*.<sup>155</sup> As stated in their Complaint, “A state cannot gamble with children’s lives.”<sup>156</sup>

The stakes in *Sacchi* are high. The CRC Committee has the opportunity to further enhance the legitimacy of the children’s climate movement, to coordinate its decision with the restructuring of the COs in accordance with 4.2.4, and most importantly, to implement a plan to lower GHGs. Conversely, should the CRC Committee hold the Petition inadmissible, or find no violation on the merits, its Views might chill the filing of OPIC climate mitigation claims in the foreseeable future. A loss by the children on their home turf- the CRC- also might take some wind out of the sails of the youth climate movement. From a purely scientific perspective, the case is straightforward. The named respondent nations emitted harmful levels of carbon, and their actions impacted upon the plaintiffs’ right to [a dignified] life. The complexities are political and jurisdictional, as I discuss below.

The primary political issue involves the equities of filing a climate petition against nations who are not the largest carbon emitters. After all, the largest emitters of CO<sub>2</sub> are China [27.2%], the United States [14.6%], and India [6.8%],<sup>157</sup> and the largest emitters of CO<sub>2</sub> per capita<sup>158</sup> are Qatar, Kuwait, the UAE, and Saudi Arabia,<sup>159</sup> none of which have signed, let alone ratified, OPIC. In fact, as of June 4, 2020, only 46 nations have ratified OPIC.<sup>160</sup> The argument is that filing “unfair” communications discourages ratification.

If OPIC is to provide meaningful access to justice for children, allowing politics to seep into the decision-making process is problematic. The better approach is to institute a cultural shift at the international level whereby submission to OPIC jurisdiction is a badge of honor, as long as the State makes good faith efforts to implement the Committee’s recommendations. Regional pressures have been effective in persuading several South American and European nations to ratify OPIC.

The greatest threat to inadmissibility is the jurisdictional argument, advanced by Brazil, France and Germany,<sup>161</sup> that the children in *Sacchi* have not exhausted all of their effective domestic remedies under OPIC article 7(e) and OPIC rule 16(3)(g).<sup>162</sup> Under a proviso to OPIC article 7(e), this requirement is waived when the application of the remedies is “unreasonably prolonged” or “unlikely to bring effective relief.”

*Y.F. v. Panama* is the only communication in which the CRC Committee previously has considered the “unreasonably prolonged” exception.<sup>163</sup> In *Y.F.*, a father filed multiple family court actions

<sup>154</sup> *Ibid.*, p. 79.

<sup>155</sup> *Ibid.*, p. 81.

<sup>156</sup> *Ibid.*

<sup>157</sup> World Economic Forum [2019]. “Chart of the Day: “These Countries Create Most of the World’s CO<sub>2</sub> Emissions.” Retrieved on June 4, 2020 from <https://www.weforum.org/agenda/2019/06/chart-of-the-day-these-countries-create-most-of-the-world-s-co2-emissions/>.

<sup>158</sup> Only states with two or more million inhabitants were included.

<sup>159</sup> UNFCCC/CDIAC/BP via Global Carbon Project [2018]. “The Countries Emitting the Most CO<sub>2</sub> Per Capita.” Retrieved on June 5, 2020 from <https://cdn.statcdn.com/Infographic/images/normal/20903.jpeg>.

<sup>160</sup> 18 nations have signed OPIC, but have not ratified it, and 134 nations have taken no action on it. The States that have ratified OPIC as of July 10, 2020 are set forth in Appendix H.

<sup>161</sup> On May 4, 2020, the plaintiffs formally responded to the respondents’ jurisdictional argument.

<sup>162</sup> The purpose of OPIC article 7 (e) is to reduce the tension between State sovereignty and the CRC’s legitimate monitoring function by providing an opportunity for the State to remedy an alleged violation prior to the submission of and resolution by the CRC. T. Buck and M. Wabwile [2013]. “The Potential and Promise of Communications Procedures under the Third Protocol to the Convention on the Rights of the Child,” *International Human Rights Law Review* 2, pp. 208-209.

<sup>163</sup> [2020]. CRC/C/83/D/48/2018.

against the mother.<sup>164</sup> Prior to the resolution of the domestic proceedings, the father initiated an OPIC communications on behalf of his three children, claiming an exemption to the OPIC article 7(e) requirement because the settlement of domestic remedies had been “unreasonably prolonged.”<sup>165</sup> The CRC Committee noted that the father’s extensive procedural maneuvers had contributed to the protracted domestic litigation, and denied him an exemption.<sup>166</sup> However, the Human Rights Committee frequently has waived the domestic remedies exhaustion requirement based upon the “unreasonably prolonged” exemption,<sup>167</sup> and given the “impact that delay may have on children’s well-being and development,”<sup>168</sup> particularly in the climate change context, the CRC Committee should grant this exemption in *Sacchi* as well. Given that the *Juliana* litigation spanned over 6 years, the petitioners’ contention in *Sacchi* that seeking multi-jurisdictional relief would cause unreasonable delay is well-founded.<sup>169</sup>

The CRC Committee stated in GC No. 5: “For rights to have meaning, effective remedies must be available to redress violations ... . Children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights.”<sup>170</sup> In previous Communications, the CRC Committee found that the plaintiffs had exhausted all effective remedies when administrative decisions could not be appealed to the national courts,<sup>171</sup> when neither administrative nor judicial authorities offered the possibility of the sought after remedy,<sup>172</sup> and when the same authority had previously rejected the same application.<sup>173</sup> In *D.C. v. Germany*,<sup>174</sup> the CRC Committee stated that a plaintiff can avoid his obligation to exhaust all domestic remedies only if he “objectively [has] no prospect of success,” not based on “mere doubts or assumptions about the success or effectiveness of remedies.”<sup>175</sup> However, the result in *D.C.* is too rigid, and its zero flexibility approach is inconsistent with other CRC OPIC 6(e) admissibility decisions.<sup>176</sup>

In *Sacchi*, there is merit to the plaintiffs’ contention that pursuing domestic remedies in each of the five respondent states would be unduly burdensome.<sup>177</sup> But the more compelling argument, rooted in CRC Communications such as *Z.H. and A.H. v. Denmark*, and *E.P. and F.P. v. Denmark*, is that the plaintiffs have exhausted their domestic remedies where “the respondents’ courts are unable to effectively

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<sup>164</sup> *Ibid.*, pp. 7-8, par. 8.2.

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*

<sup>167</sup> See e.g., *C.L.C.D. and others v. Colombia* [2016]. CCPR/C/116/D/2399/2014.

<sup>168</sup> See OPIC proposed article 4(d) and revised proposed article 9(e).

<sup>169</sup> *Sacchi* Complaint, p. 94. *Generaciones Futuras v. Minambiente* proceeded through three courts in inside a year, but it is an outlier.

<sup>170</sup> GC 5, par.24.

<sup>171</sup> *A.S. v. Denmark* [2019]. CRC/C/82/D/36/2017; and *I.A.M. v. Denmark* [2018]. CRC/C/77/D/3/2016.

<sup>172</sup> *Z.H. and A.H. v. Denmark* [2019]. CRC/C/82/D/32/2017; *E.P. and F.P. v. Denmark* [2019]. CRC/C/82/D/33/2017; *M.T. v. Spain* [2019]. CRC/C/82/D/17/2017 ; *A.D. v. Spain* [2020], CRC/C/83/D/21/2017; *N.B.F v. Spain* [2018], CRC/C/79/D/11/2017; *D.D. v. Spain* [2019], CRC/C/80/D/4/2016; *R.K. v. Spain* [2019].CRC/C/82/D/27/2017; *A.L. v. Spain* [2019], CRC/C/81/D/16/2017; *J.A.B. v. Spain* [2019]. CRC/C/81/D/22/2017; and *D.K..N. v. Spain* [2019]. CRC/C/80/D/15/2017.

<sup>173</sup> *Y.B. and N.S. v. Belgium* [2018]. CRC/C/79/D/12/2017.

<sup>174</sup> [2020]. CRC/C/83/D/60/2018.

<sup>175</sup> *Ibid.*, pp.4-5, par. 6.5.

<sup>176</sup> In *D.C.* , the 16 year old plaintiff’s position that the Constitutional Court would inevitably follow Constitutional text and precedents on voting age was reasonable. Besides, if he went to the Constitutional Court, he would be 18 years old by the time the case was resolved, which is the current voting age in Germany.

<sup>177</sup> *Sacchi* Complaint, p. 93. No CRC Communications directly support this contention. Instead, the plaintiffs invoke the decision of the IACHR in *Hul’ Qumi’ Num Treaty Group v. Canada* [2009]. Report No. 105/09, P592-07.

remedy the violations in this case because they involve legal questions that raise, with respect to diplomatic relations, non-justiciable issues in their domestic tribunals.”<sup>178</sup> For example, even if the plaintiff Lorenzo can challenge Brazilian climate policies in a Brazilian court, she can not contest the climate actions of other respondent states nor challenge Brazil’s failure to use diplomacy to protect her from the biggest carbon emitters such as China, the United States or India.<sup>179</sup>

If *Sacchi* is declared inadmissible under OPIC article 7(e), it will reinforce the perception held by far too many due to ignorance and existentialism that climate change is, at best, overblown and, at worst, a hoax. Efforts to tackle the catastrophic impact of climate change on children will be equally damaged if the Complaint is found admissible, but not violative of the right to life. As of April 2020, failure to meet the admissibility requirements is the kiss of death, but hurdling admissibility is a green light for success on the merits as well.<sup>180</sup> Should the CRC Committee designate *Sacchi* as the first admissible communications to be rejected on the merits, this action would damage the Committee’s standing as a force in promoting children’s climate rights. Although the climate research set forth in Chapter 2 confirms the destructive impact of climate change on children, and *Sacchi* plaintiffs have incorporated this scientific data into their Complaint, often “law is politics,”<sup>181</sup> prompting my recommendation that the Committee avoid protecting the respondents based on political expediency at the expense of the real threats of climate change to the [dignified] lives of the plaintiffs.

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<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*, pp. 93-94.

<sup>180</sup> W. Burkard [2020]. *Children’s Rights in Participation are a Prerequisite for Children’s Rights Participation-Admissibility in the Optional Protocol on a Communications Procedure (OPIC)*. Unpublished Manuscript, p.1.

<sup>181</sup> The mantra of critical legal theorists such as R. Unger [1975]. *Knowledge and Politics*, New York: Free Press; M. Foucault [1975]. *Discipline and Punish*, New York: Penguin; and J.Habermas [1996]. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge: Polity Press.

## 5. The Ecocide-Genocide Nexus- The Bolivian Uru-Murato Children, the Extinction of Lake Poopo, and the Death of a Culture

In 1970, Arthur Galston spoke of the parallel between genocide annihilating specific humans and ecocide decimating a specific environment.<sup>182</sup> Two years later, at the Environmental Summit in Stockholm, then Swedish Prime Minister Olof Palme, building on Galston's work, characterized the United States Army's use of the chemical weapon Agent Orange<sup>183</sup> to destroy five million acres of Vietnamese lands and a half-million acres of their crops as ecocide.<sup>184</sup> Since Agent Orange caused the premature death of 3 million Vietnamese civilians<sup>185</sup> (and 2.8 million U.S. soldiers),<sup>186</sup> as well as environmental degradation, this situation exemplifies the ecocide-genocide nexus.

Given its grave consequences, ecocide was established as the fifth crime in the Draft Code of Crimes Against Peace and Security of Mankind, subsequently renamed the Rome Statute. American, British and Dutch objections led to ecocide's deletion from the Rome Statute in 1996.<sup>187</sup> The proliferation in anthropogenic climate change-induced disasters has reinvigorated the debate over whether ecocide should be a crime justiciable before the International Criminal Court.<sup>188</sup>

Polish jurist Raphael Lemkin developed the concept of genocide, defined as the killing of a tribe or race. In Lemkin's view, genocide included not only physical death, but cultural death, including the deprivation of livelihoods, the destruction of cultural symbols, leadership, and centers, and the prohibition of cultural activities or codes of behaviors. Cultural annihilation is an effective method or technique to destroy a group.<sup>189</sup> Convinced that the *genos* existed by virtue of its common culture, Lemkin vehemently argued for the inclusion of cultural genocide in the UN Convention on Genocide, but others overruled him.<sup>190</sup>

The ecocide-cultural genocide nexus jeopardizes the survival of many indigenous communities. George Poitras, a Mikisew Cree First Nation member, describes how the environmental degradation caused by tar sands mining violates his Nation's right to life: "If we don't have land and we don't have anywhere to carry out our traditional lifestyle, we lose who we are as a people. So if there's no land, then it's equivalent in our estimation to genocide of a people."<sup>191</sup> The exponential impact of climate change generates a spiraling increase in ecocide-cultural genocide cases, as exemplified by the Uru-Murato's experience: "(w)hen indigenous peoples who have a physical, cultural and spiritual connection to their [lake] are forcibly dispossessed [by ecocide resulting from climate change and other environmental factors] and estranged from their [lake], they invariably experience 'social death,' and thus, genocide."<sup>192</sup>

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<sup>182</sup> [February 1970]. "Technology and American Power Panel," Congressional Conference on War and National Responsibility, Washington, D.C.

<sup>183</sup> [1972]. UN Conference on the Human Environment (Stockholm Conference).

<sup>184</sup> Aspen Institute [2020]. "What is Agent Orange?" Retrieved on June 19, 2020 from [aspeninstitute.org](https://www.aspeninstitute.org).

<sup>185</sup> D.Sagolj [April 4, 2017]. "Vietnamese Families Still Suffering the Aftermath of Agent Orange," *Independent*.

<sup>186</sup> N. Fisher [May 28, 2018]. "The Shocking Health Effects of Agent Orange Now a Legacy of Military Death," *Forbes*.

<sup>187</sup> A. Greene [Spring 2019]. "The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative," *Fordham Environmental Law Review*, 30(3), pp. 15-19.

<sup>188</sup> *Ibid.* Pope Francis responded in the affirmative. [November 2019]. XX International Congress of Penal Law. In addition, a dozen nations have classified ecocide as a crime within their borders. OpenMind BBV [February 27, 2020]. "The History of Ecocide, a New Crime Against Humanity."

<sup>189</sup> Crook and Short, pp. 16-17.

<sup>190</sup> *Ibid.*, pp. 18-19.

<sup>191</sup> *Ibid.*, pp. 27-28.

<sup>192</sup> *Ibid.*, p. 33.

Given the climate change denying Trump, and the climate change flip-flopping UK Prime Minister Boris Johnson, the candor of Bolivian politicians in publicizing the real threat of climate change is refreshing. Speaking at the 2015 Paris Conference of the Parties, former Bolivian President Evo Morales, an Aymara who spent his childhood near Lake Poopo, embraced anti-capitalist, anti-colonialist and anti-Global North positions against increasing carbon emissions.<sup>193</sup> Likewise, Oruro Governor Victor Hugo Vasquez, also born near Lake Poopo, blames the lake's death on the fact that "industrial countries pollute 365 days and the poor pay for that. As a result of global warming, the droughts are much longer and the rains don't come when they should. A perfect storm of environmental factors made the lake disappear."<sup>194</sup> The problem is that Morales and Vasquez use climate change to excuse their failure to implement adequate environmental protection measures, to the consternation of the Bolivian indigenous peoples.<sup>195</sup>

Environmental degradation, combined with climate change- which Bolivian leaders deem the Global North's problem, have pushed Lake Poopo, once Bolivia's second largest lake, past the tipping point. The details highlight the fragile relationship between humans and nature. Deficient waste management in El Alto, a city of two million people adjacent to La Paz, enabled refuse and pollution to infiltrate Lake Titicaca, Bolivia's largest lake, reducing its water level by two meters, and limiting the Desaguadero River's efficiency as a water conduit between Lake Titicaca and Lake Poopo.<sup>196</sup> Mining, a water intensive process, contaminates the watersheds of Lake Poopo with sludge.<sup>197</sup> Increasing urbanization-the region's population has skyrocketed from 80,000 to 300,000, without concomitant infrastructure, such as a trash and sewer system, also reduced Lake Poopo's water level.<sup>198</sup> Finally, the growth of quinoa for export, instead of indigenous plants, further depleted the lake's water level.<sup>199</sup>

Despite these multiple stressors, Lake Poopo would not have died except for climate change, which intensified usual climate variations.<sup>200</sup> The Altiplano surrounding Lake Poopo is semi-arid, with annual November to February rainfall of 350-400 millimeters.<sup>201</sup> Due to El Nino-Southern oscillation phenomenon, the Altiplano is dry in El Nino years, which occur every two to seven years, and wet in La Nina years.<sup>202</sup> The level of water in Lake Poopo fluctuated widely every 10-20 years, occasionally approaching near evaporation.<sup>203</sup>

Given El-Nino-La Nina variations, climatologists expected a correspondence between Lake Poopo's water level and the annual amount of precipitation. However, between 2013-2015, the rainfall in the Altiplano was above average, yet there was not only a marked decrease in the flow of the Desaguadero River, but also an extraordinary reduction in the water level of Lake Poopo.<sup>204</sup> The culprit was climate change. From 1965 to 2012, temperatures in the Altiplano increased between .15 and .25

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<sup>193</sup> T. Perrault [2020]. "Climate Change and Climate Politics: Parsing the Causes and Effects of the Drying of Lake Poopo, Bolivia," *Journal of Latin American Geography, Project MUSE*, doi:10.1353/lag.0.0159.

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> T. Perrault [2019]. "Living with a Dying Lake: Climate Change Politics and the Problem of Overdetermination, Lake Poopo, Bolivia." MALAS Indigenous Studies Specialization Speaker Series, Center for Latin American Studies, University of Florida.

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*

<sup>199</sup> *Ibid.*

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.*

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

<sup>203</sup> *Ibid.*

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

degrees Celsius per decade,<sup>205</sup> with 2015 and 2016 the two hottest years on record.<sup>206</sup> Lake Poopo was situated on the Altiplano at above 13,000 feet, and between 1995-2015, temperatures at this elevation had risen 75 percent faster than at lower elevations.<sup>207</sup> Limber Sanchez, Director of the Centro de Ecologia y Pueblos Andinos, observed: “It is very worrying that [the] average temperature [in the Altiplano] has risen two degrees celsius in the past several years.”<sup>208</sup> The Andean glacial melt in the Altiplano is a harbinger of expectations at lower elevations in subsequent decades, according to German glaciologist Dirk Hoffman.<sup>209</sup> In addition to warming temperatures, from 2000-2014, the transpiration rate in the Altiplano increased from 43.8-48.33 millimeters per month.<sup>210</sup> Activities foreign to the indigenous Uru, such as growing potatoes and quinoa, and using tractors to plow the lands, led to evapotranspiration “hotspots.” By 2014, Lake Poopo was shallow and saline. Commencing in June 2015, the rate of the lake’s evaporation accelerated, and it vanished five months later. When Lake Poopo died, the Uru’s culture died as well.



The Uru, known as the “People of the Water,” lived on a narrow slice of land along the shores of Lake Poopo.<sup>211</sup> With roots in the Altiplano pre-dating the Inca and the Aymara, the Uru once were the region’s dominant population until they lost their lands to Spanish colonizers and their indigenous rivals. After their defeats, the marginalized Uru lived on floating mats of dried tortora on Lake Poopo until the Bolivian government granted them enough land at three points on Lake Poopo-Llapallapani, Purlaka Tinta Maria, and Vilaneque- to build houses, schools and a soccer field.<sup>212</sup> Lake Poopo was the focal point of the Uru culture-their sustenance, their family life, their medicine, their spirituality, and their education.

When Lake Poopo was alive, two-hundred species of wildlife roamed its shores, including flocks of three different flamingos species, abundant fish swam in the lake, indigenous vegetation sprung from

<sup>205</sup> F. Satge, *et. al.* [2017]. “The Role of Climate Variability and Human Activity on Lake Poopo Droughts Between 1990 and 2015 Assessed Using Remote Sensing Data,” *Remote Sensing*, 9 (218) [no page not.].

<sup>206</sup> L. Farthing [February 3, 2017]. “Bolivia’s Disappearing Lake,” *Earth Island Journal*. Retrieved on June 8, 2020 from [http://www.earthisland.org/journal/index.php/elist/eListRead/bolivias\\_disappearing\\_lake](http://www.earthisland.org/journal/index.php/elist/eListRead/bolivias_disappearing_lake) , p. 5.

<sup>207</sup> J. Miller. Rutgers University Climate Scientist.

<sup>208</sup> Farthing, p.5.

<sup>209</sup> C. Charlton, p.5

<sup>210</sup> Satge, [no page nos.].

<sup>211</sup> Until the mid-1970s, no ethnographers wrote on the Uru, and any accounts of them were from the dominant Aymara perspective.

<sup>212</sup> In 2017, after Lake Poopo dried up, and the Uru left in droves, Morales dedicated fourteen government-built homes in PTM. The irony was not lost on Uru leader Evarista Flores: “We who lived in the lake are the ones who most need our lake back.” Farthing, p.2. The 150 Uru living in PTM share 10 acres of land. *Ibid.*

the clay land, and edible seaweed inhabited the lake. Grateful for Lake Poopo's bounty, the Uru were content in their traditional livelihood of hunting, fishing and gathering. As Uru leader Emilio Huanaco explained, "[Lake Poopo] fed us and took care of us."<sup>213</sup>

For the Uru, flamingos represented life. Each generation of children learned the Uru's hunting technique. The hunter would daze the flamingo by employing a shiny object to reflect sunlight into the flamingo's eyes, and then capture him by wrapping a string with a lead weight around his wings and legs. The Uru used every part of the dead flamingo's body for food, clothing and medicine. They used the pink fat to cure rheumatoid arthritis. They inhaled burnt feathers to thwart coughs or colds.<sup>214</sup>

The "subjective feeling" of *Gemeinschaft*- "we are the lake people," as juxtaposed with the "rational agreement by mutual consent" of *Gesellschaft*, binds the Uru. Life is oriented almost exclusively within the family unit. The lone exception is the Uru's membership in three fishing cooperatives, their primary source of cash income.

With the loss of Lake Poopo and its wetlands, Uru fisherman and hunters have sought employment in salt factories and mines.<sup>215</sup> Aureliano Valero, who, along with his wife and daughter, currently scoops salt into plastic bags on the Uyuni flat, laments: "Our work is Lake Poopo, and with that dried up, we're like orphans."<sup>216</sup> Devoid of their independence and ownership of the fruits of their labor, the Uru experience piercing alienation. One Uru remarked: "As a people we are made to be free to fish and hunt. We are not made to work for others."

The Uru's spirituality, as well as their livelihood and family life, derived from the lake. The Uru ceremonial rituals paid homage to Lake Poopo. At the commencement of each fishing season, they tossed sweets into the lake as a spiritual offering.<sup>217</sup> They also constructed giant fish and birds from tortora reeds found in the lake, and used them as props in their traditional Dance of the Fish.<sup>218</sup>

Lake Poopo was "a spiritual force that ha[d] its own agency and that actively interfere[d] and [was] connected to the life of the people in the villages."<sup>219</sup> An adolescent in PTM described her grandfather conversing with the lake, and speaking to calm the wind.<sup>220</sup> Like others, she blamed the disappearance of Lake Poopo on the Uru's growing disrespect for the lake, and their inability to live harmoniously with nature.<sup>221</sup> She viewed Uru attempts to merge indigenous spiritualism and Catholicism as misguided.<sup>222</sup> Instead of rituals glorifying the delicate balance between Uru villages and Lake Poopo,<sup>223</sup> Catholicism placed man above nature.<sup>224</sup> For example, Uru ceremonies honored St. Peter the fisherman, and the Uru people studied the biblical parable of faith and the miraculous catch of fish. When

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<sup>213</sup> Farthing, p. 3.

<sup>214</sup> N. Casey [2016]. "Climate Change Claims a Lake and an Identity." Retrieved on June 1, 2020 from [nytimes.com](https://www.nytimes.com) p. 15. Huirahuirá, a type of algae, also relieved coughs. *Ibid.*

<sup>215</sup> L. Vercruyssen [2019]. "Marginal Spaces in the Capitalocene- The Uru of Lake Poopo, Bolivia." Master's Thesis, Ghent University, Section 5.d. [No pages are provided].

<sup>216</sup> L. Blair [Jan. 4, 2018]. "The Ecological Catastrophe that Turned a Vast Bolivian Lake into a Salt Desert," *The Guardian*. Retrieved on June 8, 2020 from <https://www.theguardian.com/world/2018/jan/04/the-ecological-catastrophe-that-turned-a-vast-bolivian-lake-to-a-salt-desert>, p.2.

<sup>217</sup> Casey, p.13.

<sup>218</sup> *Ibid.*, p.2.

<sup>219</sup> *Ibid.*, Section 5.b. A few centuries back, the Uru even buried their dead in Lake Poopo, though in recent times they bury the deceased on the mainland. Watchel, p. 304.

<sup>220</sup> *Ibid.*, Section 5.b.

<sup>221</sup> *Ibid.*

<sup>222</sup> *Ibid.*

<sup>223</sup> The saucari, squalling winds from the North, can sink boats, and prevented the Uru from fishing in the waters. Casey, p. 14.

<sup>224</sup> *Ibid.*, Section 5.c.

Lake Poopo died, fish were sacred no longer, and these indigenous / Catholic hybrid ceremonies subsided as well.<sup>225</sup>

In Bolivian society, the Uru are the “vanquished of the vanquished,”<sup>226</sup> and “at the bottom of a waterfall with Aymara, caciques, mestizos, and Spaniards”<sup>227</sup> cascading upon them. Uru history is passed down among the generations of children. The few Uru children still living along the vanquished Lake Poopo shoreline perform dramas for tourists in which they vilify the Aymara’s subjugation. They are proud that the Uru culture, with the exception of their Uchumantaqu language,<sup>228</sup> has endured for so many centuries. Lake Poopo was the unifying presence behind this resilience.

The historical racism against the Uru<sup>229</sup> still persists today. The Uru children recognize this racism is systemic. Even when the Uru’s beloved lake has vanished, the Aymara continue to thwart Uru attempts to obtain more land.<sup>230</sup> Without sufficient land, Uru efforts to cultivate crops are futile, as revealed by a failed Vilanique greenhouse and limited output of onions in PTM.<sup>231</sup> One young Uru girl from PTM, active in the recently-formed Uru Women’s Organization, exclaimed that Uru communities received less than half of the government funds typically provided to other indigenous communities, denying them basic services.<sup>232</sup> For example, in PTM, the Uru’s three existing wells each contain contaminated water, causing high incidences of severe diarrhea in children.<sup>233</sup>

While until the mid-1970s, the Aymara denied the Uru access to schools,<sup>234</sup> more recently the Uru have operated their own schools, and have prioritized education, ensuring the literacy of the present generation. A dead lake forebodes a bleak future, and the Uru have encouraged their young to attend university and acquire the skills necessary for employment in an industrial economy.<sup>235</sup> But the type of education matters. A culturally appropriate education benefits not just Uru children, but all children.

In order for Uru children to maintain a healthy identity, and to grasp their potential from within their cultural experiences, their education must incorporate not only Uru content, but also Uru methods and values,<sup>236</sup> especially their sense of place,<sup>237</sup> their life on Lake Poopo. While it is a sad irony that the Uru, who did nothing to create the climate crisis, have been among the first annihilated by it, Uru children can teach other children, and the world, about nature’s interconnectedness. But the window of opportunity for Uru children to show the merits of their climate friendly culture is already narrowing. Two years after

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<sup>225</sup> I believe the Uru left their boats, made of dried Totorá reeds, and oars on Lake Poopo’s former shores as a display of homage to mother Earth, especially given that many remain optimistic of the lake’s full return one day. The notion that the Uru simply abandoned their boats and oars is incompatible with their respect for land.

<sup>226</sup> N. Watchel [2001]. “Chapter 15: “Men of the Water: The Uru Problem (Sixteenth and Seventeenth Centuries),” p.307.

<sup>227</sup> *Ibid.*

<sup>228</sup> The Uru have retained a few words of their language relating exclusively to the lake’s fauna and kin. *Ibid.*, pp. 305-306.

<sup>229</sup> For example, Jesuit Jose de Acosta stated: “These Uru are so brutish that they do not consider themselves human.” Watchel, p. 283. The Aymara viewed them pejoratively as “most contemptible ... and of lesser intelligence.” *Ibid.*, p. 284.

<sup>230</sup> *Ibid.*, Section 5.d.

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*, Section 4.b.

<sup>233</sup> *Ibid.*, Section 5.

<sup>234</sup> Watchel, p. 306.

<sup>235</sup> Blair, p.1. The Uru’s cries for the government to adhere to its promise to build a college in Llapallappni have not been heard. Vercruysse, Section 4. c.

<sup>236</sup> R. Leavitt [1994]. “They Knew How to Respect Children: Life Histories and Culturally Appropriate Education,” *Canadian Journal of Education*, 19(2), p. 182-183.

<sup>237</sup> *Ibid.*, p. 184.

relocating, Mr. Flores, PTM's former mayor, returned to Llapallapani with his wife and two children. His six year old daughter, never having viewed a vibrant Lake Poopo, stared at the dry ground, and urged her parents to "go home" to Colchani.<sup>238</sup>

Multiple stressors- government neglect, inadequate infrastructure, mining, and water diversion- jeopardized Lake Poopo's existence, but climate change- rapid warming and high transpiration rates- placed the final nail in Lake Poopo's coffin. As Perrault understood,<sup>239</sup> after the death of Lake Poopo, all signs point to the eventual assimilation of the Uru. In 2017, there were nearly 800 Urus living on the lands adjacent to the extinct Lake Poopo,<sup>240</sup> but the numbers continue to dwindle. For example, 24 of 28 families have left PTM.<sup>241</sup> The fate of Lake Poopo and the concomitant plight of the Uru demonstrate the ecocide- cultural genocide nexus in action.

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<sup>238</sup> Casey, p. 35.

<sup>239</sup> Perrault, Speaker Series.

<sup>240</sup> Farthing, p.3.

<sup>241</sup> Despite grand speeches of the Uru's imminent extinction, efforts to adopt new laws to protect the culture of the Uru have failed.

## 6. The *Teitiota* Case- The Precarious Life of the I-Kiribati Children and an Island Sinking into the Pacific

*Ioane Teitiota v. New Zealand* grapples with one of the quintessential questions at the interface of climate change and children's rights: what happens when a nation is no longer capable of sustaining a child's right to a [dignified] life?

In 2007, the New Zealand government granted work visas to the Teitiotas, I-Kiribati citizens.<sup>242</sup> The couple emigrated to NZ, and grew their family to five, with children born in 2008, 2010, and 2012.<sup>243</sup> In 2010, Teitiota hired a NZ attorney to extend his work visa: "I left everything to him."<sup>244</sup> Unbeknownst to Teitiota, he was in arrears on paying his legal fees, and his attorney never filed an application to extend his visa. A year later, on a routine traffic stop, Teitiota learned for the first time that he had overstayed his visa, and that he was subject to deportation. By that time, the opportunity for Teitiota to appeal to remain in NZ on humanitarian grounds also expired.

To resolve compounding legal difficulties, Teitiota hired a second attorney, Dr. Michael Kidd, a Pentecostal pastor specializing in law, aboriginal spirituality and anthropology. Once again, Teitiota "left everything to him." Kidd claimed he was divinely inspired to use Teitiota's plight as a "test case" for the rights of climate refugees.<sup>245</sup> What becomes clear in the ensuing litigation is that three significant parties were missing: the Teitiota children.

The evidence presented to the NZ Immigration and Protection Tribunal<sup>246</sup> painted a compelling picture that deporting the Teitiota children to climate-ravaged Kiribati, where they had never lived, would jeopardize their right to [a dignified] life. Kiribati's 2007 National Adaptation Programme of Action confirmed serious violations of the rights of children to the highest attainable standard of health, and to adequate water, sanitation and hygiene. Due to climate change-induced food insecurities, Vitamin A deficiencies and malnutrition afflict sixty percent of children below the age of ten.<sup>247</sup> In addition, climate change triggered extra-high spring tides, which contaminated the drinking water, and bolstered the prevalence of diarrhea among infants and children.<sup>248</sup> The expert testimony of John Corcoran, Ph.D., a native I-Kiribati, concurred with the NAPA's position that sea-level rise created grave health risks for young children due to salt water incursion: "[t]here have been increases in cases of diarrhea in children and some deaths have been reported."<sup>249</sup> In lay testimony, Teitiota's wife also expressed her concern about the impact of sea-level rise on her children's safety: "They are young. The youngest is six months, the eldest five years. [I have] heard stories of children getting diarrhea and even dying because of problems associated with poor drinking water."<sup>250</sup>

The IPT's rationale for rejecting Teitiota's application is not germane to the Teitiota children. The IPT emphasized that "the environmental degradation caused by slow and sudden-onset disaster is one faced by the Kiribati population generally."<sup>251</sup> By contrast, if the Teitiota children were deported to Kiribati,

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<sup>242</sup> K. Weiss [2015]. "The Making of a Climate Refugee." Retrieved on May 15, 2020 from <https://foreignpolicy.com/2015/01/28/the-making-of-a-climate-refugee-kiribati-tarawa-teitiota/> p.2.

p.3.

<sup>243</sup> *Ibid.*

<sup>244</sup> *Ibid.*, p.5.

<sup>245</sup> *Ibid.*, p.7.

<sup>246</sup> [2013] NZIPT 800413.

<sup>247</sup> *Ibid.*, par. 10.

<sup>248</sup> *Ibid.*, par. 11.

<sup>249</sup> *Ibid.*, par. 19.

<sup>250</sup> *Ibid.*, par. 33.

<sup>251</sup> *Ibid.*, par. 75.

risks would be personal, not general. The 2007 NAPA and expert testimony demonstrated that, given their young ages, and heightened vulnerabilities, the Teitiota children faced critical risks to their health and well-being, even death. The physiological and psychological stress associated with relocation from their native New Zealand to an unknown life in Kiribati exacerbated these risks.

The High Court,<sup>252</sup> the Court of Appeals<sup>253</sup> and the Supreme Court of NZ<sup>254</sup> all affirmed the Tribunal's rejection of Teitiota's application to remain in NZ. Having exhausted his domestic remedies, Teitiota filed a claim with the HRC. The HRC declined to request that NZ stay Teitiota's deportation pending the Committee's decision, and NZ authorities deported the Teitiota family to Kiribati.<sup>255</sup>

Before the HRC, Teitiota argued on the merits that, due to the deleterious effects of climate-induced sea level rise in Kiribati, his deportation to Kiribati violated his right to life.<sup>256</sup> To bolster his argument, Teitiota submitted written comments which alleged that, upon the family's return to Kiribati, they had "reasonably bad health issues" due to the lack of access to clean drinking water.<sup>257</sup> It was noteworthy that one of his children had "suffered from a serious case of blood poisoning, which caused boils all over the body."<sup>258</sup>

In evaluating Teitiota's communication, the HRC primarily relied on the IPT's factual assessment,<sup>259</sup> and adopted the State's position that although climate change-induced environmental degradation could create a pathway into protected person jurisdiction, no such pathway existed in Teitiota's case.<sup>260</sup> Nonetheless, the HRC, like the IPT, and the NZ domestic courts, recognized the urgency of confronting the catastrophic impact of climate change. The HRC espoused a pro-active approach to the plight of climate change refugees, particularly those who are citizens of sinking island states:

"[W]ithout robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 [right to life] or 7 [prohibition against torture or cruel, inhuman or degrading treatment] of the Covenant, thereby triggering the *non-refoulement* obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may be incompatible with the right to life with dignity before the risk is realized."<sup>261</sup>

Underlying the HRC *Teitiota* dissenters' concerns is whether the international obligations imposed upon the States produce meaningful domestic actions. Both dissenters, Sancin and Muhumuza, found that NZ's assessment of the situation of Teitiota and his family was "clearly arbitrary or manifestly erroneous," and that the State's removal of Teitiota violated his right to life.<sup>262</sup> Sancin asserted: "Water can be designated as potable, while containing micro-organisms dangerous for health, particularly for children (all three of the [Teitiota] children were born in New Zealand and were thus never exposed to

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<sup>252</sup> [2013] NZHC 3125.

<sup>253</sup> [2014] NZCA 173.

<sup>254</sup> [2015] NZSC 107.

<sup>255</sup> *Ibid.*, par. 1.2.

<sup>256</sup> *Ibid.*, par. 1.1.

<sup>257</sup> *Ibid.*, par. 5.

<sup>258</sup> *Ibid.*, par. 2.1-2.10.

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

<sup>260</sup> *Ibid.*, par. 4.5.

<sup>261</sup> *Ibid.*, par. 9.11.

<sup>262</sup> *Ibid.*, Sancin, par. 6; and Muhumuza, par. 1.

water conditions in Kiribati).<sup>263</sup> Muhumuza stated: “It should be sufficient [for a violation] of the right to life under ICCPR article 6 that the child of [Teitiota] has already suffered significant health hazards on account of environmental conditions.”<sup>264</sup> Given the impact of climate change on small island developing states with limited internal migration alternatives, the further question is whether the actions will be expeditious as well as meaningful.

Given escalating demands for climate-induced refugee status, a planned migration strategy is integral to maintaining a functional international protection system. In order to ensure I-Kiribati children [a dignified] life, we must be proactive, not reactive, and act with a sense of purpose and urgency. As Muhumuza noted in his *Teitiota* dissent, “even if deaths are not occurring with regularity on account of [climate-induced] conditions, it should not mean that the threshold [for a violation of the right to life] has not been reached.”<sup>265</sup> Indeed, climate-induced thresholds for a violation of the right to [a dignified] life already have been surpassed in many Oceanic islands, such as Vanuatu, the Cook Islands and Micronesia, as well as Kiribati, and in the least developed countries world-wide, like Bangladesh, Haiti, and Chad. Rather than splitting hairs over how horrific conditions must be in Kiribati before granting international protection, the HRC majority should have supported the Teitiota’s family right to a dignified life. In light of these circumstances, it was shortsighted for the HRC to end this seven year saga by supporting NZ’s right to deport the NZ-born Teitiota children to Kiribati.



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In *Teitiota*, the NZ Tribunal and courts, as well as the HRC, all agreed that in the appropriate case, climate-induced environmental degradation may create a pathway into protected person jurisdiction.<sup>266</sup> McIver, *et. al*’s. schema linking climate-related change in the Pacific to the health impacts of climate change in the Pacific provides the first three elements of the needed pathway in *Teitiota*.<sup>267</sup> Climate-change induced phenomena, such as altered frequency and/or severity of extreme weather events, triggers pathways for the health impacts of climate change, such as storms and floods, which, in turn, precipitates the potential health effects of climate, such as the increasing incidence of water-borne diseases.<sup>268</sup> The *obiter dictum* in the HRC’s View in *Teitiota* provides the final link in the chain. The health effects of climate change either violate the right to life, *e.g.*, increasing mortality due to non-

<sup>263</sup> *Ibid.*, Sancin , par. 3.

<sup>264</sup> *Ibid.*, Muhumuza, par. 5. The extent to which other HRC members believed the same, but felt their hands were tied because only Teitiota’s communication was before them, remains unclear.

<sup>265</sup> Muhumuza, par. 5.

<sup>266</sup> [2015] NZSC 107, par 13; [2014] NZSC 173, par. 41; [2013] NZHC 3125, par. 27; and [2013] NZIPT 800413, par. 55; and [2020] CCPR/C/127/D2728/2016, par. 4.5.

<sup>267</sup> [2014], p. 5226.

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

communicable diseases, or the right to a dignified life, e.g., malnutrition, especially with regard to children, legitimizing a refugee's claim for protected person jurisdiction.

The impact of climate change on Kiribati sanitation conventions crystallizes the distinction between the notion of dignity, and the ICCPR and CRC's concept of the right to [a dignified] life. 34.6% of I-Kiribati practice open defecation and another 17.2% defecate in pit latrines, hanging latrines or bucket latrines.<sup>269</sup> While CRC article 24(2)(e) obligates States to take measures to educate its citizens about environmental sanitation, and SDG target 6.2 aims to end open defecation by 2030, the use of open or unimproved defecation *per se* does not violate ICCPR article 6 or CRC article 6. However, in Kiribati, storm surges and sea level rise wash waste from the South Tarawan lagoon onto the land and into the freshwater supply, increasing children's risk of severe diarrhea, and swelling their mortality rates, thereby violating their right to [a dignified] life.<sup>270</sup> In order to ensure the right of I-Kiribati children, and other children in Pacific Island developing States, to a [dignified] life, the CRC Committee should address the multiplicity of connections between climate change and nutrition, education, child protection and social protection, as well as health and sanitation.

I-Kiribati children are acutely aware of climate change and its catastrophic impact on life in Kiribati. Comments captured in children's workshops paint a bleak picture: sea level rise causes houses to fall into the ocean and unhappy people; high tides make small islands disappear; heat makes us feel uncomfortable; and water inside our well is salty.<sup>271</sup> Drawings are often dramatic, such as a child trapped in a flooded house asking for help.<sup>272</sup> Government authorities, both in Pacific Island states of origin and potential receiving states, need to catch up to what children already know due to their lived experience.

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<sup>269</sup> UNICEF [2017], pp. 49-50.

<sup>270</sup> UNICEF [2011], p. 25.

<sup>271</sup> *Ibid.*, pp. 28-29.

<sup>272</sup> *Ibid.*, p. 28.

## 7. Climate Change as a Security Risk- Conflict and Child Suicide Bombers in the Lake Chad Basin

Complex-fragility risks are the interactions between climate change and extant economic, environmental, political and social pressures.<sup>273</sup> Scientists depict these risks as a feedback loop whereby climate change compounds conflict, which in turn undermines local community efforts to adapt to climate change, which exacerbates the impact of climate change on conflict, and so on.<sup>274</sup> Ulrika Modeer, Director of the Bureau of External Relations, UN Development Program, observed, “When climate change and other conflict drivers converge [in the Lake Chad Basin], the consequences for individuals and communities can be devastating.”<sup>275</sup>

The dynamics of climate change in the Lake Chad Basin require disentangling. Given that Lake Chad receded from 25,000 kilometers squared in the 1960s to 1,350 kilometers squared in 2005,<sup>276</sup> climatologists initially suspected that Lake Chad, like Lake Poopo, would vanish.<sup>277</sup> While Lake Chad did not die, and indeed has grown to 15,000 kilometers squared,<sup>278</sup> climate-induced warming and extreme and unpredictable weather patterns have reaped havoc on the region.<sup>279</sup>

On the LCB, warming occurs at rates one-and-half times the world average, resulting in severe droughts, escalating conflict rates, and displacement at catastrophic levels.<sup>280</sup> In addition, the frequency, amount and location of rainfall on the LCB is uncertain, jeopardizing the health of the Lake’s shallower northern portion.<sup>281</sup> Unlike the Uru, who were prototypical fisherman, LCB residents have strived to adjust their planting and their livelihoods, switching between fishing and farming, contingent upon environmental conditions, but climate-induced extreme and mercurial weather conditions have made adaptation near impossible,<sup>282</sup> exacerbating competition over already scarce resources.<sup>283</sup>

Changing climate has proliferated conflicts among fishermen, farmers, pastoralists and States in the LCB. Militarized state security forces clash with civilians due to austere restrictions on what farmers can plant and where fishermen can cast their nets.<sup>284</sup> As grazing along Chad Lake’s Northern region is no longer viable, Hausa and Fulani cattle herders seek to settle permanently on the lake’s more lush

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<sup>273</sup> C. Nagarajan [2018]. “Climate-Fragility Profile: Lake Chad Basin,” Berlin: Adelphi, p. 24.

<sup>274</sup> *Ibid.*, pp. V-VI.

<sup>275</sup> “Key Findings-Shoring up Stability [2018].” Retrieved on June 13, 2020 from <https://shoring-up-stability.org/key-findings/>.

<sup>276</sup> D. Yunana, et. al. [2017]. “Climate Change and Lake Water Resources in Sub-Saharan Africa: Case Study of Lake Chad and Lake Victoria,” *Nigerian Journal of Technology*, 36(2), p.648.

<sup>277</sup> In opening remarks at the 2015 Paris Climate Conference, Niger President Mahamadou Issoufou stated: “Lake Chad is dying.” Quoted in UNICEF [August 2016]. “Children on the Move, Children Left Behind-Uprooted or Trapped by Boko Haram,” p.2.

<sup>278</sup> Yunana, p. 650.

<sup>279</sup> F. Onuoha [2010]. “Climate Change, Population Surge and Resource Overuse in the Lake Chad Area,” *Monograph*, 170, pp.28-29.

<sup>280</sup> Adelphi [2019]. “Shoring Up Stability- Addressing Climate and Fragility Risks in the Lake Chad Region,” p. 5.

<sup>281</sup> *Ibid.*

<sup>282</sup> “Climate change has shaken the farming calendar.” Watang Felix Zieba, Professor, University of Marou, Cameroon.

<sup>283</sup> Adelphi [2019], p.5.

<sup>284</sup> Adelphi Profile, p.11. Over the years, security forces have killed as many civilians as have terrorist groups. *Ibid.*, p. 14.

Southern region and encounter resistance from farmers.<sup>285</sup> Nigerian fishermen clash with Cameroonian and Chadian gendarmes over ambiguous territorial boundaries.<sup>286</sup> According to Okpara, et. al.,<sup>287</sup> who drew upon O'Brien and Leichenko's concept of double exposure<sup>288</sup> to understand climate change /variability and water conflict interactions among fishermen, farmers and pastoralists, farmers are most exposed to the combined effects of climate change / variability and water conflict, and pastoralists are the most vulnerable to these combined effects, as well as prone to climate-structured aggressive behavior.<sup>289</sup>

There also is double exposure with respect to climate change / variability and terrorism.<sup>290</sup> In 2015, former U.S. President Barack Obama stated: "[While] climate change did not cause the conflicts we see around the world ... we also know that severe drought helped to create the instability in Nigeria that was exploited by the terrorist group Boko Haram."<sup>291</sup> Climate-induced extreme rising temperatures and variable rainfalls have resulted in food insecurity for 5 million people, enticing some to align themselves with either Boko Haram or ISWAP based upon promises of adequate food and even business loans.<sup>292</sup>

The plight of young farmers on the LCB is a case in point. Half the population is under age 15,<sup>293</sup> and full-time farming typically commences in earnest at age 15.<sup>294</sup> Of the 200 LCB farmers Nwokeoma and Kingsley interviewed, only 10% knew about the concept of climate change,<sup>295</sup> but 95% recognized

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<sup>285</sup> F. Onuoha, pp. 32-34. C. Wilkie [2015]. "The Other Conflict That Is Costing Nigeria Billions" Retrieved 07.09.2016 from [http://www.huffingtonpost.com/entry/the-other-conflict-that-is-costing-nigeria-billions\\_us\\_55b16289e4b0a13f9d17ed51](http://www.huffingtonpost.com/entry/the-other-conflict-that-is-costing-nigeria-billions_us_55b16289e4b0a13f9d17ed51); S. Olukoya [2015] "Fears of resource conflict fueled by climate change in Nigeria. Retrieved June 20, 2020 from <http://www.dw.com/en/fears-of-resource-conflicts-fuelled-by-climate-change-in-nigeria/a-18884687>.

See DW [July 12, 2015]. "Lake Chad: Climate Change Fosters Terrorism." Retrieved on June 13, 2020 at <https://www.dw.com/en/lake-chad-climate-fosters-terrorism/a-18899499>, p.3. For example, herdsman-farmer conflicts led to 1,400 deaths in 2018. Stimson [2019]. "The Looming Accelerant: the Growing Links Between Climate Change, Mass Atrocities, and Genocide." Retrieved on May 16, 2020 at <https://www.stimson.org/2019/looming-accelerator-growing-links-between-climate-change-mass-atrocities-and-genocide/>, p.6

<sup>286</sup> Onuoha, p. 33. Nigeria and Cameroon have a long history of border disputes in the Chad Lake Basin region. The International Court of Justice found in favor of Cameroon in 2003, and Nigeria withdrew from the disputed territory shortly thereafter. M. Niasse [2005]. "Climate-Induced Water Conflict Risks in West Africa: Recognizing and Coping With Increasing Climate Impacts on Shared Watercourses," Human Security and Climate Change Workshop, Oslo, Norway.

<sup>287</sup> U. Okpara, et. al. [2017]. "Using a Novel Climate-Water Conflict Vulnerability Index To Capture Double Exposures in Lake Chad," *Regulatory Environmental Change*, 17:351-66.

<sup>288</sup> K. O'Brien and R. Leichenko [2000]. "Double Exposure: Assessing the Impacts of Climate Change Within the Context of Economic Globalization," *Global Environmental Change* 10(3): 221-232.

<sup>289</sup> Okpara, p. 363. Since the villagers' socio-cultural and religious beliefs restricted interviews to males, vulnerable female-headed homes were underrepresented in the data. *Ibid.*, p. 357.

<sup>290</sup> Okpara, p. 355; B. Nwokeoma and A.Chinedu [2017]. "Climate Variability and Consequences for Crime, Insurgency, in North East Nigeria," *Mediterranean Journal of Social Sciences*, 8(3), p. 171.

<sup>291</sup> Quoted in *Ibid.*, p.4. Accord Adelphi, op. cit., p. 7.

<sup>292</sup> N. Sauer [2019]. "Lake Chad is Not Shrinking, But Climate is Fueling Terror Groups: Report." Retrieved on June 13, 2020 from <https://climatechangenews.com/2019/05/16/lake-chad-not-shrinking-climate-fuelling-terror-groups-report/>, p. 2.

<sup>293</sup> "Insurgency, Terrorism and Organized Crime in a Warming Climate-Analysing the Links Between Climate Change and Non-State Armed Groups," p.10.

<sup>294</sup> Nwokeoma and Kingsley, p. 174.

<sup>295</sup> Even among Nigerian university students, knowledge of climate change is low. See e.g., E. Oruonye [2011]. "An Assessment of the Level of Awareness of the Effects of Tertiary Institutions in Jalingo Metropolis Terabis State Nigeria," *Journal of Geography and Regional Planning*, 4(9), pp. 513-517.

the impact of manifestations of climate change on farming in the region, including weather irregularity, shrinking rainfall, drought, desertification, and dry/scorching hotness.<sup>296</sup> Significantly, 97% of the youth interviewees stated that the impact of climate change manifestations on agriculture is a disincentive to farming.<sup>297</sup> Moreover, 60% of the full pool of interviewees suggested that, given the dim prospects of survival through traditional work, LCB youth are in a state of anomie,<sup>298</sup> and especially susceptible to the messaging of Boko Haram's recruiters.<sup>299</sup> Although climate change-induced economic disenfranchisement, not ideology, motivates most youths to join Boko Haram,<sup>300</sup> once indoctrinated, they have no compunction about pillaging their communities.<sup>301</sup> The region's exclusion and marginalization of the large youth population, particularly in employment,<sup>302</sup> contributes to the youth's propensity for ruthless behavior.

The climate-intensified insecurities provided a window of opportunity for Boko Haram and ISWAP to terrorize communities,<sup>303</sup> and they have persistently used this aperture to exacerbate an extant humanitarian crisis,<sup>304</sup> impacting upon the right of the child to [a dignified] life. As of 2017, terrorist violence has contributed to the displacement of one million children, the severe acute malnutrition of one-half million children, the closing of more than a quarter of health districts, and diminished vaccine coverage.<sup>305</sup> During the past decade, terrorists have murdered at least 36,000 people in Northeast Nigeria, on the edge of Lake Chad.<sup>306</sup> Moreover, ISWAP attacks in the Nigerian State of Borno recently are sharply on the rise. On June 9, 2020, ISWAP killed 81 people in the Gubio Local Government Area [LGA].<sup>307</sup> Four days later, on June 13, 2020, ISWAP killed 60 people, and wounded hundreds more in the Monguro and Nganzai LGAs.<sup>308</sup>

Boko Haram's well-publicized 2014 abduction of the Chibok school girls is the tip of the iceberg of its disdain for human rights. In addition to regularly abducting children, Boko Haram ironically recruits orphans enraged by the terrorist-sponsored deaths of their caregivers, and also receives children as gifts from parents pledging their loyalty. They turn some of these children into suicide bombers, a heinous violation of their right to life.

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<sup>296</sup> *Ibid.*, pp. 175-176.

<sup>297</sup> *Ibid.*

<sup>298</sup> E. Durkheim (1897) [1951]. *Suicide: A Study in Sociology*, New York: the Free Press, New York.

<sup>299</sup> *Ibid.*, p. 177. Viche Yatahd, Mayor, Mozogo, Nigeria stated: "Climate change creates turmoil. Farming is in crisis because rainfall is in decline. This has pushed poor young men to look for the easy option and join armed forces like Boko Haram." See E. Eichelberger [2014] "How Environmental Disaster is Making Boko Haram Violence Worse." Retrieved on June 16, 2020 from [www.motherjones.com/environment/2014/06/Nigeria](http://www.motherjones.com/environment/2014/06/Nigeria).

<sup>300</sup> *Ibid.*, pp. 178-179.

<sup>301</sup> DT, p.2. See "Insurgency, Terrorism," p. 14.

<sup>302</sup> Adelphi Profile, p. 012.

<sup>303</sup> "Insurgency, Terrorism," pp. 16-17.

<sup>304</sup> The emergence of Boko Haram has contributed to increasing the poverty rate in an already highly impoverished area by further impacting upon the farming and fishing industries. "Insurgency, Terrorism ...," p. 11-12, 19.

<sup>305</sup> A. Awosusi [2017]. "Aftermath of Boko Haram violence in the Chad Lake Basin: A Neglected Global Health Threat," *BJM Global Health*, 2.

<sup>306</sup> *Okpara, p. 355; Nwokeoma Chinedu .*

<sup>307</sup> Gardaworld [June 14, 2020]. "Nigeria: Militant Attacks Kill Scopres in Borno State June 13."

<sup>308</sup> *Ibid.*



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In a perversion of CRC article 5's "evolving capacities," Boko Haram targets children as suicide bombers precisely because of their multiple vulnerabilities- their smaller physical stature, their less mature cognitive development, their susceptibility to psychological manipulation, and their propensity for hero worship.<sup>309</sup> They drug the children before a suicide mission to rob them of their agency.<sup>310</sup> Witnesses commented on a 10-year old girl who detonated in a crowded marketplace, killing twenty: "the young girl was blown in two" and "it wasn't clear if she knew what she was doing."<sup>311</sup>

Warner and Matfess, in a 2017 study, found that of 134 Boko Haram suicide bombers identified by age and sex, 53 were teenagers and 28 were non-teen children, and four-fifths of the children were girls.<sup>312</sup> Three of the suicide bombers were only seven years old.<sup>313</sup> In 2018, Boko Haram used 48 children, including 38 girls, as suicide bombers.<sup>314</sup> Boko Haram uses child suicide bombers to attack soft targets - markets, IDP camps, and bus stations constitute half of the child bombers' targets, turning children into "killing machines" who inflict more fatalities per attack than do their adult counterparts, and unwittingly victimize civilian children as well.<sup>315</sup> Those few child suicide bombers with the fortitude to escape Boko Haram, and reclaim their right to life, are shunned by their own communities.<sup>316</sup>

The fact that the path from climate change-induced severe drought and unpredictable rainfall patterns to terrorists using child suicide bombers is complex suggests that national top-down assessments of climate-security are likely to be ineffective. In the LCB, as elsewhere, "[u]nderstanding the *local variation* of climate and societies needs to be the foundation of any effort to address climate-security risks."<sup>317</sup> Listening to the children in the LCB region is a prudent place to start.

<sup>309</sup> J. Warner and H. Matfess [2017]. "Exploding Stereotypes- The Unexpected Operational and Demographic Characteristics of Boko Haram's Suicide Bombers," *Combating Terrorism Center at West Point*, pp. 33-34.

<sup>310</sup> *Ibid.*, p. 34.

<sup>311</sup> *Ibid.*, pp. 37-38.

<sup>312</sup> *Ibid.*, p. 35. There was no age and sex information on an additional 300 bombers.

<sup>313</sup> *Ibid.*

<sup>314</sup> "Nigeria: 'Children Used' as Suicide Bombers in Borno Attack" [June 18, 2019]. Accessed on June 13, 2020 at [www.bbc.com/news/world-africa-48674014](http://www.bbc.com/news/world-africa-48674014), p. 2.

<sup>315</sup> Warner and Matfess, *op. cit.*, p.37.

<sup>316</sup> Aljazeera [April 12, 2017]. " 'Alarming Rise in Boko Haram Child Suicide Bombers'" Retrieved on June 16, 2020 at <https://www.aljazeera.com/news/2017/04/rise-boko-haram-child-suicide-bombers-170412041301650.html> , pp. 2-3.

<sup>317</sup> "Shoring Up Stability," *op. cit.*, p.14.

## 8. Concluding Observations

Befitting the chapter's title, the primary goal in this section is to allow the fictional "climate change and the right to [a dignified] life" COs for the Plurinational State of Bolivia, Kiribati and Nigeria [Appendices A-C] to speak for themselves. However, in reflecting upon these COs, I urge the reader to bear in mind the following context.

In shunning paternalistic traditions, and reinventing children as rights holders, the CRC Committee has facilitated and promoted children's participatory rights. Child climate activists, at the community, national and international levels, have exemplified the promise of CRC article 12. Guided by democratic ideals of equality and justice, they have conscientiously and passionately urged that, for the sake of all humanity, we follow the science. Indeed, in a more fair-minded world, free from the trappings of the "hamster wheel" of capital accumulation, political expediency, anti-scientist bias, nationalism, existentialist anxiety, misinformation and exploitative deception, the public would view the scientifically-driven goals of child climate activists as reasonable and modest. The Green New Deal, backed by the U.S. Youth Climate Strikers and the Sunrise Movement, and denigrated by the Right as part of a radical socialist agenda, merely seeks to limit GHG emissions to levels that allow extreme risks, but avoid catastrophic ones. Or, as another example, is it really too much for child climate activists to expect governments not to be complicit in "bringing us nearer to the eve of destruction," as Justice Hurwitz somberly predicted in *Juliana*?

When Australian Prime Minister Scott Morrison derided child climate activists as "lacking context and perspective"<sup>318</sup> and urged them to be "less activist,"<sup>319</sup> the CRC Committee expressed "its concern and disappointment" that the government disrespected children for expressing their concerns about the climate crisis.<sup>320</sup> But other than this rare rebuke, the CRC Committee has shown little inclination to support child climate activists or to legitimize the children's climate movement. Since climate change is a serious, if not catastrophic threat to the dignified lives of children, the CRC Committee has an obligation to uphold the children's *Sacchi* Complaint and to treat climate change mitigation and adaptation in its COs with the exigency they merit. Unless, as an initial step, the CRC Committee considers climate change worthy of its own section in the COs, as well as a constant in the six issues in the COs requiring urgent measures, how can it persuade the States that failure to move beyond the status quo in the face of climate change amounts to suicide? If children can not depend on members of their UN home turf to help them save the planet, as the 21st century unfolds, it may indeed be the end of the world as we know it, but unlike in the REM song, we will not feel fine.

### 8.1 [Fictional] Concluding Observations on the fifth periodic report of the Plurinational State of Bolivia<sup>321</sup> [See Appendix A]

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<sup>318</sup> S. Biddulph [October 1, 2019]. "Morrison a 'bad dad' for denigrating young climate protestors," *The Sydney Morning Herald*.

<sup>319</sup> [November 26, 2018]. "Scott Morrison tells students striking over climate change to be 'less activist'," Australian Associated Press.

<sup>320</sup> CRC/C/AUS/CO/5-6 [2019], par. 40.

<sup>321</sup> In light of climate change, the ecocide-cultural genocide nexus jeopardizes the survival of many indigenous communities. In accordance with CRC articles 6, 30, and 31, and GC 11, did the CRC Committee have an obligation to engage in meaningful action to save Lake Poopo, and along with it, the centuries old Uru-Murato culture?

**8.2 [Fictional] Concluding Observations on the second periodic report of Kiribati<sup>322</sup>**

[See Appendix B]

**8.3 [Fictional] Concluding Observations on the fifth periodic report of Nigeria<sup>323</sup> [See Appendix C]**

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<sup>322</sup> Kiribati submitted its 45 page 2nd-4th reports on February 13, 2019, CRC/C/KIR/2-4 [2019], and the CRC Committee responded with a list of issues on April 8, 2020, CRC/C/KIR/Q/2-4 [2020]. Neither document discussed climate change. Hopefully, climate change issues will be discussed during dialogue so that they can be included in the upcoming coming real COs. as opposed to the fictional COs in this section. "Concluding Observations." Retrieved on July 9, 2020 from <https://cocreporting.childrightsconnect.org/convention-on-the-rights-of-the-child-concluding-observations/>. The CRC Committee should carve out a role in climate-induced migration cases to protect and promote the needs of children in these island states.

<sup>323</sup> I chose Nigeria to represent the LCB due to the high degree of conflict in Northeast Nigeria, both with respect to farmers and herdsmen, and terrorists. I reviewed the ACRWC COs for Nigeria, but there was no information on climate change. The CRC Committee should consider the role it can play in reducing climate-induced food insecurities which allow terrorists to attract new recruits, especially disgruntled youth farmers

## Appendix A

### [Fictional] Concluding observations on the fifth periodic report of the Plurinational State of Bolivia

#### III. Main areas of concern and recommendations

5. The Committee would like to draw the State party's attention to the recommendations concerning the following areas, in respect of which urgent matters must be taken: climate and the right to a [dignified] life (para. 30 ); ... .

#### C. Climate change and the right to a [dignified] life

21. The Committee expresses appreciation for the State's implementation of the Plurinational Policy and Plan on Climate Change to Live Well. The Committee also notes with appreciation the drafting of the Declaration of the World People's Conference on Climate Change and the Defense of Life- Tiquipaya, Bolivia, which highlights that climate change threatens the right of children to [a dignified] life.

22. The Committee welcomes the candor of the State in recognizing the threat of climate change. However, as reflected in the remarks of indigenous leaders, the Committee is concerned that the State too often uses climate change to excuse its inadequate environmental protection measures. As evidenced by the evaporation of Lake Poopo, environmental degradation exacerbated by warming temperatures and transpiration pushes a fragile ecosystem passed the tipping point.

#### Climate change and the business sector

24. Recalling its previous concluding observations,<sup>324</sup> and concurring with the views of Special Rapporteur Stavenhagen, who met with Uru-Murato leaders, inadequate environmental regulations and ineffective monitoring of corporate activities, combined with the state's failure to negotiate with indigenous communities affected by mining,<sup>325</sup> have created severe environmental and climate crises in the indigenous communities in the department of Oruro.<sup>326</sup> Over a decade ago, Stavenhagen warned that the activities of mining companies were damaging the Desaguadero river basin and Lake Poopo,<sup>327</sup> jeopardizing the the existence of the Uru-Murato and other vulnerable indigenous peoples.<sup>328</sup> He recommended urgent preventive and remedial environmental action.<sup>329</sup> The Committee is deeply concerned that the State did not heed Stavenhagen's warning, leading to the evaporation of Lake Poopo and the destruction of the Uru-Murato's culture. Extractivism run amok is incompatible with the State's professed goal of protecting Pachamama [Mother Earth].<sup>330</sup>

25. The Committee recommends that the government enforce the obligations of financial institutions to ensure that businesses conduct satisfactory environmental and climate assessments prior to loan

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<sup>324</sup> Concluding Observations on the fourth periodic report of the Plurinational State of Bolivia. [2009]. CRC/C/BOL/CO/4, p. 5.

<sup>325</sup> *OCHR in Bolivia (2013-2014 Report)*. OHCHR-Bolivia focuses on the right of indigenous communities affected by a corporate action to "free, prior and informed consent through consultation," par.2.

<sup>326</sup> R. Stavenhagen [2009]. *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples-Mission to Bolivia*. UNGA A/HR/11/11, par. 34.

<sup>327</sup> *Ibid.*, par. 36.

<sup>328</sup> *Ibid.*, par. 36, 47.

<sup>329</sup> *Ibid.*, par. 43.

<sup>330</sup> OHCHR. [May 15, 2019]. "Bolivia's greatest challenge: Ensure economic sustainability of the social inclusion model and its contribution to human rights." UNGA Compilation on Bolivia [2019]. A/HRC/WG.6/34/BOL/2, par. 82.

approval.<sup>331</sup> As UN expert Juan Pablo Bohoslavsky stated: “The economy should serve the people, not vice versa.”<sup>332</sup>

#### Climate change and the participation of children

26. The Committee commends the State for ratifying OPIC on April 2, 2013, and in accordance with CRC article 42, encourages the State to publicize the communications procedure to children and adults alike.

27. Recalling its previous concluding observations,<sup>333</sup> the Committee notes the low level of children’s participation in the State, especially at the department and municipal levels. A more decentralized Children’s Plurinational Legislative Assembly would better represent the diversity of children’s voices throughout the State.<sup>334</sup>

28. Indigenous children, such as the Uru-Murato children, are both acutely aware of environmental and climate impacts, and disproportionately adversely affected by them. Therefore, the Committee recommends that the State make extensive efforts to solicit the recommendations of indigenous children on environmental and climate matters.

29. The Committee notes the State’s history of perceiving children as objects of protection, rather than rights-holders. While children have worked on many climate-related projects, e.g., in Caranavi, children helped 300 coffee producers implement climate-smart agricultural yield and post-yield practices,<sup>335</sup> they are underrepresented in the Bolivian Climate Change Platform. The Committee recommends the State move expeditiously to implement measures that enable children to assume a leadership role in the Bolivian climate movement.

#### Climate change and the right to culture

30. The Committee recalls Lemkin’s words that cultural death is genocide. Lake Poopo was the focal point of the Uru-Murato culture- their sustenance, their family life, their medicine, their spirituality and their education. When Lake Poopo died, the culture of the Uru-Murato died along with it. The Committee is gravely concerned that the State’s inaction on environmental and climate matters led to the death of the Uru-Murato culture. Given the spiraling impact of climate change in the Altiplano, the Committee is seriously concerned that the ecocide-cultural genocide nexus also will imperil cultural survival in other indigenous communities in the State.

31. The educational law “Avelino Sinani” was enacted to promote educational diversity in the State.<sup>336</sup> The Committee recommends the State utilize this law to ensure the Uru Murato children receive an education which not only incorporates Uru content, but also Uru methods and values. The Uru Murato children, whose lake-centered culture was annihilated by climate change, have an important story to tell to other children, and the world, about nature’s interconnectedness.

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<sup>331</sup> J. Bohoslavsky. “End-of-Mission statement by the Independent Expert on his trip to Bolivia (May 6-15, 2019), par. 5.

<sup>332</sup> *Ibid.*, par. 8.

<sup>333</sup> CRC/C/BOL/CO/4, p. 8.

<sup>334</sup> *Ibid.*

<sup>335</sup> CLAC [2019]. “Young People Leading the Adaptation to Climate Change in Fair-trade Coffee.” Retrieved on July 3, 2020 at [clac-comerciojusto.org/en/lineas-de-trabajo](http://clac-comerciojusto.org/en/lineas-de-trabajo) .

<sup>336</sup> Estado Plurinacional de Bolivia Ministerio de Educación [2010]. Ley de la Educación “Avelino Sinani-Elizardo Perez” No. 070. See CRC/C/BOL/CO/4, *op. cit.*, p. 16.

## Appendix B

### [Fictional] Concluding observations on the second periodic report of Kiribati

#### III. Main areas of concern and recommendations

5. The Committee would like to draw the State party's attention to the recommendations concerning the following areas, in respect of which urgent matters must be taken: climate and the right to a [dignified] life (para. 23 ); ... .

#### C. Climate change and the right to a [dignified] life

22. The Committee welcomes the State's adoption of the Joint Implementation for Climate Change and Disaster Risk Management 2014-2023, a systematic plan designed to complement the National Disaster Risk Management Plan, the National Framework for Climate Change, and the Climate Change Adaptation.<sup>337</sup> The Committee also notes with appreciation the State's leading role in the Pacific Resilience Partnership Taskforce.<sup>338</sup> However, the Committee recommends that the State accelerate efforts to secure international support and assistance in pursuing its climate change adaptation and mitigation plans.<sup>339</sup>

23. The Committee concurs with the HRC Committee's conclusion in *Teitiota* : the risk of Kiribati "becoming submerged under water is such an extreme risk, the conditions of life in such a country may be incompatible with the right to life with dignity before the risk is realized."<sup>340</sup> While the State's "migration with dignity" policy is well-intended, it only applies to I-Kiribati who express interest in migrating in the near future, and who possess requisite educational and vocational qualifications.<sup>341</sup> Given that it is not a question of whether, but rather when Kiribati will disappear into the Pacific, the Committee recommends pursuing a more comprehensive and equitable planned migration strategy to guarantee all I-Kiribati children the right to [a dignified] life.

#### Climate change and the business sector

24. Although the State's carbon dioxide emissions, which stem primarily from energy and transportation, are among the lowest in the world, the State continues to suffer the devastating impacts of internationally-derived climate change.<sup>342</sup> To prevent further consequences, the Committee recommends the State implement steps to encourage businesses to increase their use of renewable energy technologies, and improved energy security.<sup>343</sup>

#### Climate change and the participation of children

26. The Committee recommends that the State immediately ratify OPIC, and, in accordance with CRC article 42, publicize the communication procedure to children and adults alike.

27. Recalling the previous concluding observations, the Committee observes that the State continues to do little to facilitate the participation of children in climate-related issues.<sup>344</sup> The Committee notes, however, that children are among the members of the Kiribati Children's Campaigns Network, which

<sup>337</sup> Universal Periodic Review National Report [2019]. A/HRC/WG.6/35/KIR/1, par. 68. See also CEDAW/C/KIR/CO/1-3, par. 45.

<sup>338</sup> *Ibid.*, par. 48.

<sup>339</sup> UNGA Compilation on Kiribati [2019]. A/HRC/WG.6/35/KIR/2, par. 35.

<sup>340</sup> CCPR/C/127/D/2728/2016, par. 9.11.

<sup>341</sup> K. McNamara [2015]. "Cross-Border Migration with Dignity in Kiribati," *Forced Migration Review* 49, p. 62.

<sup>342</sup> WHO / UN Framework Convention on Climate Change [2017]. "Climate and Health Profile-Kiribati," p.7

<sup>343</sup> *Ibid.*

<sup>344</sup> CRC/C/KIR/CO/129 [2006]. "Respect for the Views of the Child." The CEDAW Committee notes similar concerns regarding the participation of women in the State in the implementation of climate change initiatives. CEDAW/C/KIR/CO/1-3 [2020].

devotes a portion of its efforts toward mitigating the impact of climate change.<sup>345</sup> Moreover, a UNICEF study confirms that I-Kiribati children are acutely aware of climate change and its catastrophic impact on life in Kiribati, and, consequently, the State can learn much from the children's lived experiences.<sup>346</sup>

#### Climate change and the right to physical and mental health and nutrition

28. Recalling its previous concluding observations,<sup>347</sup> the Committee welcomes the State's withdrawal in 2015 of its reservations on CRC 24(b)-24(f).<sup>348</sup> However, the Committee is deeply concerned about the impact of climate on the health of I-Kiribati children. Due to climate change-induced food insecurities, Vitamin A deficiencies and malnutrition afflict sixty percent of children below the age of 10.<sup>349</sup> In addition, warming temperatures coincide with higher rates of ciguatera poisoning, producing symptoms such as diarrhea, vomiting and fever.<sup>350</sup>

29. Due to budget constraints, the State has limited ability to cope with climate-induced health risks. The Committee recommends the State seek expanded international funding, such as that provided by the EU, which initiated GCCA-PSIS to allow surveillance of climate sensitive diseases.<sup>351</sup>

#### Climate change and the right to water, sanitation and hygiene

30. Recalling its previous observations,<sup>352</sup> the Committee recommends the State install an effective sewage disposal system. In accordance with CRC article 24(2)(e), the State must publicize the new sanitation practices. Storm surges and sea level rise wash waste onto the land and into the freshwater supply, increasing children's risk of severe diarrhea, and swelling their mortality rates, thereby violating their right to a [dignified] life.<sup>353</sup> In addition, contaminated water has caused children to suffer from septicemia, triggering sepsis, which can lead to tissue damage, organ failure, or death.<sup>354</sup>

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<sup>345</sup> Climate Action Network International. "Kiribati Children's Campaigns Network." Retrieved on July 3, 2020 from [climatenetwork.org](http://climatenetwork.org).

<sup>346</sup> UNICEF [2011], pp. 28-29.

<sup>347</sup> CRC/C/KIR/CO/129 [2006]. "General Measures of Implementation."

<sup>348</sup> CRC [2015] Endnote 40.

<sup>349</sup> NZIPT 800413 [2013], par. 10.

<sup>350</sup> WHO/UN Framework, *op. cit.*, p. 4.

<sup>351</sup> *Ibid.*, p. 5.

<sup>352</sup> CRC/C/KIR/CO/129 [2006]. "Environmental Health."

<sup>353</sup> UNICEF [2011], p. 25.

<sup>354</sup> CCPR/C/127/D/2728/2016, par. 2.1-2.10. See Johns Hopkins Medicine. "Septicemia."

## Appendix C

### [Fictional] Concluding observations on the fifth periodic report of Nigeria

#### III. Main areas of concern and recommendations

5. The Committee would like to draw the State party's attention to the recommendations concerning the following areas, in respect of which urgent matters must be taken: climate and the right to a [dignified] life (para. 23 ); ... .

#### C. Climate change and the right to a [dignified] life

21. The Committee welcomes the State's ratification of the Paris Climate Change Agreement in March 2017. The Committee urges the State to meet or exceed its pledge to reduce unconditionally its GHG emissions by 20% by 2030.<sup>355</sup>

22. The Committee is deeply concerned about the inability of the State to protect children in the Lake Chad Basin from dual climate-conflict crises.<sup>356</sup> Severe drought, desertification, unpredictable rainfalls and food insecurities have escalated herdsman-farmer conflicts, and have provided a window of opportunity for Boko Haram and ISWAP to terrorize communities. The right of children in the Lake Chad Basin to [a dignified] life has been threatened as follows: [1] Boko Haram murders and maims children in the Borno, Adamawa, and Yobe States;<sup>357</sup> [2] Nigerian authorities arbitrarily arrest and detain children as suspected Boko Haram members;<sup>358</sup> [3] The children abducted by Boko Haram are used as forced recruits, human shields, and suicide bombers;<sup>359</sup> [4] Many children, especially girls, leave school due to the Boko Haram insurgency;<sup>360</sup> [5] Children who escape Boko Haram are stigmatized and marginalized by their own communities<sup>361</sup>; [6] The Civilian Joint Task Force recruited children aged nine and over;<sup>362</sup> [7] 113 of the 276 Chibok students abducted in 2014 remain missing,<sup>363</sup> and [8] security forces commit human rights violations, including against children, during states of emergency.<sup>364</sup>

23. The Committee is gravely concerned about terrorists' using children as suicide bombers. The Committee strongly recommends that the State prioritize ending this heinous practice of depriving children of their right to life.

24. In accordance with CRC article 39, the Committee recommends that the State rehabilitate and reintegrate into society children who have been abducted or mistreated by terrorist, state or civilian groups. As appropriate, the State should apply the Countering Violent Extremism Programme principles,<sup>365</sup> but in a child-friendly manner.

<sup>355</sup> L. Barber and R. Israel. [2017]. "A Checkup on Country Efforts to Implement the Paris Agreement. Retrieved on July 4, 2020 at [climatescorecard.org](https://climatescorecard.org) .

<sup>356</sup> In general the State neglects the North as opposed to the South e.g., on health care. UNCR Committee [2010]. "Combined 3rd and 4th Concluding Observations: Nigeria," CRC/C/NGA/CO/3-4, p. 14, par. 59.

<sup>357</sup> UNGA [2018]. "Compilation on Nigeria." A/HRC/WG.6/31/NGA/2, p. 4.

<sup>358</sup> *Ibid.* See UNGA [2018]. "Summary of Stockholders' Submissions on Nigeria." A/HRC/WG.6/31/NGA/3, p. 4, par. 32.

<sup>359</sup> *Ibid.*

<sup>360</sup> *Ibid.*, p. 8.

<sup>361</sup> *Ibid.*, p. 9.

<sup>362</sup> *Ibid.*

<sup>363</sup> UNGA, "Summary of Stockholders'", *op. cit.*, p. 4, par. 34.

<sup>364</sup> UNCCPR Committee [2019]. "Concluding Observations on Nigeria in the Absence of Its Second Periodic Report." CCPR/C/NGA/CO/2, p.3.

<sup>365</sup> UNGA [2018]. "National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Nigeria," A/HRC/WG.6/31/NGA/1, p. 3, par. 13.

#### Climate change and the business sector

24. The Committee notes the State is one of the largest GHG emitters in Africa.<sup>366</sup> The Committee welcomes the State's 2013 National Policy on Climate Change, which aims to foster low-carbon, high growth economic development,<sup>367</sup> as well as its regulatory steps to reduce GHG emissions, including the 2018 Flare Gas regulations<sup>368</sup> and the 2017 National Gas Policy.<sup>369</sup> However, the Committee is concerned that the State has only sporadically forced businesses to comply with its regulatory apparatus.<sup>370</sup>

25. The Committee recommends the State add a Climate Change section to its proposed National Action Plan on Business and Human Rights.<sup>371</sup>

#### Climate change and the participation of children

26. The Committee notes that there is a small community of youth climate activists in the State,<sup>372</sup> one of whom is a litigant in *Sacchi*.<sup>373</sup> In addition, several hundred Nigerian children have joined "Fridays for Future".<sup>374</sup> These child climate activists are acutely aware of the pressing climate-induced threats in the State, including food insecurities, farmer-herdsmen clashes, internally displaced people, and terrorist attacks.<sup>375</sup> The Committee recommends that the State incorporate the views of these children into future State climate policies and actions.

27. While most Nigerians are aware of the impact of climate change,<sup>376</sup> only a few understand the concept itself.<sup>377</sup> The Committee recommends the State educate children nation-wide on climate change, and facilitate community mitigation projects.

#### Climate change and the right to be free from all forms of violence

28. The Committee is seriously concerned about the high incidence of violence against children in all settings.<sup>378</sup>

29. The Committee is deeply concerned that the State has shown an unwillingness to remedy the climate-induced scarcity at the root of protracted violence between the Fulani herdsman and the indigenous

<sup>366</sup> T. Obiezu [October 10, 2019]. "Nigerian Students Join Global Fight for Climate Action." Retrieved on July 4, 2020 from <https://www.voanews.com/africa/nigerian-students-join-global-fight-climate-action>, p. 2.

<sup>367</sup> Department of Climate Change, Federal Ministry of Environment, Abuja [2020]. "National Policy on Climate Change." Retrieved on July 4, 2020 from [climatechange.gov.ng](http://climatechange.gov.ng).

<sup>368</sup> IEA [2020]. "Flare Gas (Prevention of Waste and Pollution) Regulations 2018. Retrieved on July 4, 2020 from [sea.org](http://sea.org).

<sup>369</sup> Federal Republic of Nigeria, Ministry of Petroleum Resources [2017]. *Nigeria National Gas Policy*.

<sup>370</sup> See CRC/C/NGA/CO/3-4, op. cit., p.11, pars. 46 and 47.

<sup>371</sup> See UNGA [2018]. "Report of the Working Group on the Universal Periodic Review." A/HRC/40/7, p. 8, par. 106.

<sup>372</sup> E. Marris. [September 2019]. "Why Young Climate Activists Have Captured the World's Attention," *Nature*.

<sup>373</sup> Twelve year old Deborah Adegbile. See *Sacchi, et. al., op. cit.* See also BBC News [September 24, 2019]. "Climate Change: Nigerian, 15 Oda Young Pipo File Complain Against Five World Economies."

<sup>374</sup> Obiezu, *op. cit.*, p.2.

<sup>375</sup> Marris, *op. cit.*

<sup>376</sup> Nwokeoma and Kingsley, *op. cit.*

<sup>377</sup> Oruonye, *op. cit.*

<sup>378</sup> OHCHR [2019]. "OHCHR in Nigeria." Retrieved on July 4, 2020 from <https://www.ohchr.org/EN/Countries/AfricaRegion/Pages/NGSummary2019.aspx>, p. 1.

farmers.<sup>379</sup> Deaths in herdsman-farmer conflicts have exceeded those in Boko Haram attacks.<sup>380</sup> The Committee is also concerned about reports that girls have been raped during these conflicts.<sup>381</sup>

30. The Committee notes that in its HRC Report, the State acknowledges that Boko Haram is a well-organized body, and poses an existential threat.<sup>382</sup> The Committee supports the State's position that Boko Haram members who commit terrorist acts must be legally tried,<sup>383</sup> but urges the State to ensure they receive due process.<sup>384</sup>

31. In order to effectively counter Boko Haram's threat, as well as quell herdsman-farmer conflicts, the Committee adopts the recommendation of the 2014 Special Rapporteur on minority issues: "the [State] must plan and implement coordinated state and national policies to fight the adverse effects of climate change [desertification, droughts, food and water shortages] and provide sustainable solutions for the use of land by the different communities with competing lifestyles and livelihoods."<sup>385</sup>

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<sup>379</sup> CCPR/C/NGA/CO/2, *op. cit.*, p. 6; UNGA, "Summary of Stockholders," p. 10, par. 93.

<sup>380</sup> "OHCHR in Nigeria," *op. cit.*, p. 2.

<sup>381</sup> *Ibid.* UN Special Rapporteur Agnes Callamard will issue a report on this issue to the UN Human Rights Council in July 2020. OHCHR [2019]. "Nigeria Needs Urgent Action to End "Pressure Cooker" of Violence Claiming Thousands of Lives, Says UN Rights Expert," pp. 1-2.

<sup>382</sup> OHCHR [2019]. "Human Rights Committee Reviews the Situation of Civil and Political Rights in Nigeria. Retrieved on July 4, 2020 from <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?Nes.aspk?NewsID=24792&LangID=E> , p. 4.

<sup>383</sup> *Ibid.*

<sup>384</sup> *Ibid.*, p. 6. In 2018, 318 Boko Haram members were convicted and 637 were acquitted. UNGA, "National Report," *op. cit.*, p.17.

<sup>385</sup> UNGA [2018], *op. cit.*, p. 3; "Compilation on Nigeria." A/HRC/WG.6/31/NGA/2.

**Appendix D**  
**CRC CONCLUDING OBSERVATIONS 2017-APRIL 2020**  
**DISCUSSION OF CLIMATE CHANGE- HEALTH AND WELFARE**

**III. Main areas of concern and recommendations**

**H. Basic health and welfare**

**Impact of climate change on the rights of the child**

**2nd report: Federated States of Micronesia- CRC/C/FSM/CO/2 [April 3, 2020]**

56. While welcoming the enactment of the Climate Change Law in 2013, the Committee is concerned that the State party has not integrated the specific vulnerabilities and needs of children into its policies and programmes addressing climate change and disaster risk management.

57. Taking note of targets 13.2, 13.3 and 13.b of the Sustainable Development Goals, the Committee recommends that the State party:

- (a) Ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account in developing policies and programmes addressing the issues of climate change and disaster risk management;
- (b) Increase awareness among children of, and their preparedness for, climate change and natural disasters by incorporating it into the school curriculum and teacher-training programmes and increasing the physical safety and resilience of school infrastructure;
- (c) Review emergency protocols to ensure that they include assistance and other support for all children, in particular those with disabilities, during emergencies and natural disasters;
- (d) Improve data collection and assessments so as to have an evidence base for risk reduction and preparedness, in particular for the distinct needs and priorities of children with disabilities.

**Combined 2nd-5th reports: The Cook Islands- CRC/C/COK/CO/2-5 [April 2, 2020]**

44. While noting the measures taken to strengthen climate change adaptation and resilience, including disaster risk reduction, the Committee is deeply concerned about the following:

- (a) The increasingly adverse impact of global climate change and natural disasters on the rights of the child in the Cook Islands, including the rights to life, survival and development, non-discrimination, education, health, adequate housing and safe drinking water and sanitation;
- (b) The insufficient inclusion of the rights and needs of children, including children with disabilities, in policies and programmes on climate action, including climate-related disaster risk reduction, preparedness, response and recovery;
- (c) The lack of opportunities for children to effectively participate in discussions and decision-making related to climate action.

45. The Committee, drawing attention to target 13.5 of the Sustainable Development Goals, recommends that the State party:

- (a) Ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account in developing policies and programmes addressing the issues of climate change and disaster risk management;
- (b) Collect data, disaggregated by relevant factors, identifying the types and levels of risk faced by children to the occurrence of a variety of disasters in order to formulate international, regional and national policies, frameworks and agreements accordingly;
- (c) Strengthen measures to increase awareness and preparedness among children for climate change and natural disasters, including by integrating environment and climate change issues into the national curriculum;
- (d) Seek bilateral, multilateral, regional and international cooperation in implementing the present recommendations.

**Combined 2nd-5th reports: Tuvalu- CRC/C/TUV/CO/2-5 [March 31, 2020]**

42. While noting the measures taken to promote climate change resilience in the community and in schools, including disaster risk reduction and school safety initiatives, the Committee is deeply concerned about:

- (a) The increasingly adverse impact of global climate change on the rights of the child, including the rights to life, survival and development; non-discrimination; education; health; adequate housing; and safe drinking water and sanitation;
- (b) The contamination of underground water supplies owing to rising sea levels, which hinders access to safe drinking water and sanitation for children, including in schools;
- (c) The insufficient inclusion of the rights of children, including those of children with disabilities, in policies and programmes on climate action, including climate-related disaster risk reduction, preparedness, response and recovery;
- (d) The insufficient opportunities for children to effectively participate in discussions and decision-making related to climate action.

43. The Committee draws attention to target 13.2 of the Sustainable Development Goals, and recommends that the State party:

- (a) Ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account in developing policies and programmes addressing the issues of climate change and disaster risk management;
- (b) Collect disaggregated data identifying the types of risk faced by children in the occurrence of a variety of disasters, in order to formulate international, regional and national policies, frameworks and agreements accordingly;
- (c) Strengthen the implementation of national policies for sustainable safe water supplies and sanitation, including the sustainable and integrated water and sanitation policy, with a view to increasing access to sufficient safe drinking water and providing adequate sanitation, including in the outer islands;
- (d) Strengthen measures to increase children's awareness and preparedness for climate change and natural disasters, including by strengthening climate change education in schools across the country;
- (e) Provide opportunities for children to effectively participate in discussions and decision-making related to climate action;
- (f) Seek bilateral, multilateral, regional and international cooperation in implementing these recommendations.

**Combined 5th-6th reports: Austria- CRC/C/AUT/CO/5-6 [March 6, 2020]**

35. The Committee recommends that the State party:

- (a) Ensure that its climate mitigation policies, in particular those concerning the reduction of greenhouse gas emissions in line with the State party's international commitments, are compatible with the principles of the Convention, including the rights of the child to the enjoyment of the highest attainable standard of health and an adequate standard of living, and that the special vulnerabilities and needs of children, as well as their views, are systematically taken into account throughout the implementation, monitoring and evaluation of these policies;
- (b) Conduct an assessment of policies related to the transport sector and the impacts of the resulting atmospheric pollution and greenhouse gas emissions on children's rights as a basis for designing a well-resourced strategy to remedy the situation, and eliminate any subsidies contributing to the promotion of modes of transport that undermine the rights of children to the highest attainable standard of health.

**Combined 5th-6th reports: Australia- CRC/C/AUS/CO/5-6 [November 1, 2019]**

40. The Committee is very concerned about the State party's position that the Convention does not extend to protection from climate change. The Committee emphasizes that the effects of climate change have an undeniable impact on children's rights, for example the rights to life, survival and development, non-discrimination, health and an adequate standard of living. It is also concerned that the State party has made insufficient progress on the goals and targets set out in the Paris Agreement and about its continuing investment in extractive industries, in particular coal. The Committee expresses its concern and disappointment that a protest led by children calling on government to protect the environment received a strongly worded negative response from those in authority, which demonstrates disrespect for the right of children to express their views on this important issue.

41. The Committee draws attention to target 13.5 of the Sustainable Development Goals and urges the State party:

- (a) To ensure that children's views are taken into account in developing policies and programmes addressing climate change, the environment and disaster risk management and to increase children's awareness and preparedness for climate change and natural disasters;
- (b) To promptly take measures to reduce its emissions of greenhouse gases by establishing targets and deadlines to phase out the domestic use and export of coal and to accelerate the transition to renewable energy, including by committing to meeting 100 per cent of its electricity needs with renewable energy.

**Initial report: Tonga- CRC/C/TON/CO/1 [ July 2, 2019 ]**

53. Noting that the State party is among the most vulnerable countries in terms of exposure to natural hazards and risk, the Committee welcomes the revised Joint National Action Plan on Climate Change and Disaster Risk Management of 2018. However, the Committee is concerned that:

- (a) More could be done to include the special needs of children, including children with disabilities, in planning disaster risk reduction preparedness, response and recovery;
- (b) School infrastructure, particularly in remote areas, is not resilient, reliable and accessible in case of natural disaster.

54. The Committee draws attention to targets 13.1, 13.3 and 13.b of the Sustainable Development Goals, and recommends that the State party:

- (a) Fully implement and support with adequate resources the revised Joint National Action Plan on Climate Change and Disaster Risk Management, including addressing key gaps identified from the implementation of the previous plan;
- (b) Continue building children's awareness and preparedness for climate change and natural disasters;
- (c) Review emergency protocols to include assistance and other support for all children, particularly those with disabilities, during emergencies and natural disasters;

(d) Improve data and assessments to have an evidence base for risk reduction and preparedness, particularly for the distinct needs and priorities of children with disabilities;

(e) Invest sufficient human, technical and financial resources in health care, given the potential major public health burden of climate change-related health risk

56. Recalling its general comment No. 1 (2001) on the aims of education and taking note of target 4.1 of the Sustainable Development Goals, the Committee urges the State party to:

(d) Update curricula to be responsive to the rapidly changing environment and encourage direct participation of children in environmental protection as a component of their learning process.

**Second report: Cabo Verde- CRC/C/CPV/CO/2 [June 27, 2019]**

72. The Committee is concerned about the lack of information on the impact of climate change on the rights of the child, given that the State party is already experiencing a shortage of freshwater, an increase in sea level, changes in rainfall patterns, desertification and an increase in temperatures.

73. The Committee draws attention to target 13.b of the Sustainable Development Goals and recommends that the State party:

- (a) Ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account in developing policies and programmes addressing the issues of climate change and disaster risk management;
- (b) Collect disaggregated data identifying the types of risk faced by children to the occurrence of a variety of disasters to formulate responses accordingly;
- (c) Increase children's awareness and preparedness for climate change and natural disasters by incorporating

**Combined 4th-5th reports: Japan- CRC/C/JPN/CO/4-5 [March 5, 2019]**

37. The Committee draws attention to Sustainable Development Goal 13 and its targets. In particular, it recommends that the State party:

- (a) Ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account in developing policies or programmes addressing the issues of climate change and disaster risk management;
- (b) Increase children's awareness and preparedness for climate change and natural disasters by incorporating the topic into the school curriculum and teachers' training programmes;
- (c) Collect disaggregated data identifying the types of risk faced by children to the occurrence of a variety of disasters in order to formulate international, regional and national policies, frameworks and agreements accordingly;
- (d) Ensure that climate mitigation policies are compatible with the Convention, including by reducing its emissions of greenhouse gases in line with its international commitments to avoid a level of climate change threatening the enjoyment of children's rights, particularly the right to health, food and an adequate standard of living;
- (e) Reconsider the State party's funding of coal-fired power plants in other countries and ensure that they are gradually replaced by power plants using sustainable energy;
- (f) Seek bilateral, multilateral, regional and international cooperation in implementing these recommendations.

**Combined 3rd-6th reports: Guinea- CRC/C/GIN/CO/3-6 [February 28, 2019]**

36. The Committee recommends that the State party ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account in disaster risk management and in developing policies or programmes addressing issues of climate change, particularly droughts, and that it strengthen reforestation measures.

**Combined 5th-6th reports: Sri Lanka- CRC/C/LKA/CO/5-6 [March 2, 2018]**

36. The Committee draws attention to target 13.b of the Sustainable Development Goals on promoting mechanisms for raising capacity for effective climate change-related planning and management, and recommends that the State party increase children's awareness of and preparedness for climate change and natural disasters by incorporating the topic into the school curriculum and teacher-training programmes.

**Combined 5th-6th reports: Guatemala- CRC/C/GTM/CO/5-6 [February 28, 2018]**

37. Drawing attention to target 13.b on promoting mechanisms for raising capacity for effective climate change-related planning and management, the Committee recommends that the State party ensure that the needs and views of children living in the "dry corridor" area are taken into account in developing policies and programmes to address the impact of climate change and in developing disaster risk management strategies.

**Combined 2nd-3rd reports: Solomon Islands- CRC/C/SLB/CO/2-3 [February 28, 2018]**

42. Noting that the State party is particularly vulnerable to climate change, the Committee is concerned that the State party has not included climate change adaptation and disaster risk reduction in the school curriculum and does not have school-based early warning systems in place, that more could be done to include the special needs of children, including children with disabilities, in planning disaster risk reduction preparedness, response and recovery, and that school infrastructure, particularly in remote areas, is not resilient and accessible in case of natural disaster.

43. The Committee draws attention to target 13.b of the Sustainable Development Goals on promoting mechanisms for raising capacity for effective climate change-related planning and management. In particular, it recommends that the State party:

- (a) Include children in the review of the National Disaster Management Plan, include climate change adaptation and disaster risk reduction in the school curriculum and establish school-based programmes such as early warning systems;
- (b) Develop a comprehensive disaster-sensitive social protection system and ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account;
- (c) Improve data and assessments to have an evidence base for risk reduction and preparedness, particularly for the distinct needs and priorities of children with disabilities, and review emergency protocols to include assistance and other support to children with disabilities during emergencies and natural disasters;
- (d) Increase children's awareness and preparedness for climate change and natural disasters and increase physical safety and resilience of school infrastructure;
- (e) Ensure access to schools that are being or likely to be affected by severe weather events, especially for those in remote or rural communities, and consider alternative methods of teaching;
- (f) Seek regional and international cooperation in implementing these recommendations.

**2nd report: Palau- CRC/C/PLW/CO/2 [February 28, 2018]**

48. The Committee is concerned that there is no information on whether climate change adaptation and disaster-risk reduction are part of the school curriculum, on whether there is a comprehensive disaster-sensitive social protection system in place and on the measures in place addressing the special needs of children in vulnerable situations, including children with disabilities, when planning disaster-risk reduction preparedness, response and recovery.

49. The Committee draws attention to target 13.b of the Sustainable Development Goals on promoting mechanisms for raising capacity for effective climate change-related planning and management, and recommends that the State party:

- (a) Include climate change adaptation and disaster-risk reduction in the school curriculum and establish school-based programmes, such as early warning systems and training on what to do in the event of a natural disaster;
- (b) Develop a comprehensive disaster-sensitive social protection system, ensuring that the special vulnerabilities and needs of children, as well as their views, are taken into account;
- (c) Review emergency protocols to include assistance and other support for children with disabilities during emergencies and natural disasters;
- (d) Increase children's awareness of and preparedness for climate change and natural disasters and increase the physical safety and resilience of school buildings and infrastructure;
- (e) Improve data and assessments in order to have an evidence base for risk reduction and preparedness, taking into account in particular the distinct needs and priorities of preschool children and children with disabilities;
- (f) Seek regional and international cooperation in implementing these recommendations.

**Combined 3rd-4th reports: Marshall Islands- CRC/C/MHL/CO/3-4 [February 27, 2018]**

33. The Committee welcomes the adoption of the Joint National Action Plan for Climate Change Adaptation and Disaster Risk Management 2014–2018 and the National Climate Change Policy Framework. It is, however, concerned about:

- (a) The insufficient incorporation of climate change adaptation and disaster risk reduction into the school curriculum;
- (b) The lack of a comprehensive disaster-sensitive social protection system;
- (c) The insufficient inclusion of the special needs of children, including children with disabilities, in planning disaster risk reduction, preparedness, response and recovery;
- (d) The inadequate number of and access to evacuation centres, particularly in the outer islands.

34. The Committee draws attention to target 13.b of the Sustainable Development Goals on promoting mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States. In particular, it recommends that the State party:

- (a) Effectively implement the Joint National Action Plan for Climate Change Adaptation and Disaster Risk Management 2014–2018 and the National Climate Change Policy Framework;
- (b) Increase children's awareness and preparedness for climate change and natural disasters by including climate change adaptation and disaster risk reduction in the school curriculum and establish school-based programmes such as early warning systems;
- (c) Develop a comprehensive disaster-sensitive social protection system and ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account;
- (d) Review emergency protocols to include assistance and other support for children with disabilities during emergencies and natural disasters;
- (e) Increase the number of evacuation centres and ensure that they are accessible to all children, especially children with disabilities and those living on the outer islands;

(f) Improve data and assessments in order to establish an evidence base for risk reduction and preparedness, particularly for the distinct needs and priorities of children with disabilities.

**5th report: Democratic People's Republic of Korea- CRC/C/PRK/CO/5 [October 23, 2017]**

43. The Committee welcomes the State party's cooperation with the United Nations country team on developing integrated responses to climate change issues. The Committee draws attention to target 13.b of the Sustainable Development Goals, and recommends that the State party:

- (a) In cases of climate-related emergencies that disrupt access to food, such as floods and droughts, provide children with immediate access to treatment for malnutrition;
- (b) Increase children's awareness of and preparedness for climate change and natural disasters by incorporating them into the school curriculum and teachers' training programmes;
- (c) Continue to cooperate with, among others, UNICEF and the World Food Programme, and pay particular attention to child rights issues in disaster risk reduction, response management and preparedness initiatives.

**Combined 3rd-5th reports: Tajikistan- CRC/C/TJK/CO/3-5 [September 29, 2017]**

38. Noting the increased frequency and intensity of natural disasters experienced in the State party due to climate change and the resulting human and property losses as well as damages to the socio-economic and cultural infrastructure, the Committee urges the State party to adopt a child-focused approach to coping with and adapting to climate change and include children in the development of its National Climate Change Adaptation Strategy (2016-2030), with special attention to children with disabilities and girls, taking note of target 13.5 of the Sustainable Development Goals on promoting mechanisms for raising capacity for effective climate change-related planning and management.

**Combined 2nd-4th reports: Vanuatu- CRC/C/VUT/CO/2-4 [September 29, 2017]**

42. The Committee welcomes the mainstreaming of the Disaster Risk Management, Climate Change Adaptation and Energy in the National Reviewed Curriculum. It is however concerned that the State party has not included the climate change adaptation and disaster risk reduction in the school curriculum, does not have a comprehensive disaster sensitive social protection system in place, that not enough is done to include the special needs of children, including children with disabilities, in planning disaster risk reduction preparedness, response and recovery, and that school infrastructure, particularly in remote areas, is not resilient and accessible in case of natural disaster.

43. The Committee draws attention to target 13.5 of the Sustainable Development Goals on promoting mechanisms for raising capacity for effective climate change-related planning and management. In particular, it recommends that the State party:

- (a) Implement the National Reviewed Curriculum in the next school year and include climate change adaptation and disaster risk reduction in the school curriculum and establish school-based programmes such as early warning systems;
- (b) Develop a comprehensive disaster sensitive social protection system and ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account;
- (c) Review emergency protocols to include assistance and other support to children with disabilities during emergencies and natural disasters;
- (d) Increase children's awareness and preparedness for climate change and natural disasters and increase physical safety and resilience of school infrastructure;
- (e) Ensure access to schools that are being or likely to be affected by severe weather events, especially for those in remote or rural communities and consider alternative methods of teaching;
- (f) Improve data and assessments to have an evidence base for risk reduction and preparedness, particularly for the distinct needs and priorities of children with disabilities.

**5th report: Mongolia- CRC/C/MNG/CO/5 [July 12, 2017]**

36. Noting the impact of climate change on the fragile ecosystem of the State party and the direct impact on children as a result of extreme winters that lead to significant losses in livestock, particularly among herding families, the Committee urges the State party to adopt a child-focused approach to coping and adapting to climate change and include children in the development of its policies and plans, taking note of target 13.5 of the Sustainable Development Goals on promoting mechanisms for raising capacity for effective climate change-related planning and management.

**Combined 3rd-5th reports: Bhutan- CRC/C/BTN/CO/3-5 [July 5, 2017]**

36. The Committee welcomes the adoption of the second National Adaptation Programme of Action to reduce climate change-related risks and vulnerabilities and, drawing attention to target 13.5 of the Sustainable Development Goals on promoting mechanisms for raising capacity for effective climate change-related planning and management, it recommends that the State party:

- (a) Ensure that the special vulnerabilities and requirements of children, as well as their views, are taken into account when developing policies and programmes addressing the issues of climate change and disaster risk management;
- (b) Increase children's awareness and preparedness for climate change and natural disasters by incorporating these issues into the school curriculum and teachers' training programmes;
- (c) Develop sustainable systems for water management and supply to address the drying up of spring water sources and prevent children from having to carry water to help their families.

Standard of living

37. The Committee draws attention to target 6.2 of the Sustainable Development Goals on providing access to adequate and equitable sanitation and hygiene for all and recommends that the State party strengthen its efforts to provide nationwide access to adequate sanitation facilities, in particular in rural and poor urban areas. The Committee urges the State party to take measures to ensure an adequate standard of living for children from economically disadvantaged families.

**Combined 2nd-4th reports: Antigua and Barbuda- CRC/C/ATG/CO/2-4 [June 30, 2017]**

46. Noting that the State party is prone to natural disasters, and drawing attention to target 1.5 of the Sustainable Development Goals on building the resilience of the poor and those in vulnerable situations by 2030 so as to reduce their vulnerability to extreme climate-related events, economic, social and environmental shocks and disasters, the Committee recommends that the State party:

- (a) Identify, including through the collection of disaggregated data, the types of risks children would face in the event of natural disasters;
- (b) Ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account in developing policies and programmes addressing climate, environmental change and disaster risk management;
- (c) Seek bilateral, multilateral, regional and international cooperation in the areas of disaster risk reduction and of mitigation of and adaptation to the effects of climate and environmental change

**Combined 2nd-3rd reports: Saint Vincent and the Grenadines- CRC/C/VCT/CO/2-3 [March 13, 2017]**

51. Noting that the State party is prone to natural disasters, and drawing attention to target 1.5 of the Sustainable Development Goals on building the resilience of the poor and those in vulnerable situations by 2030 so as to reduce their vulnerability to extreme climate-related events, economic, social and environmental shocks and disasters, the Committee recommends that the State party:

- Identify, including through the collection of disaggregated data, the types of risks children would face in the event of a variety of natural disasters;
- (b) Ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account in developing policies or programmes addressing the issues of climate change and disaster risk management;
- (c) Seek bilateral, multilateral, regional and international cooperation in the areas of disaster risk reduction, mitigation and adaptation to the effects of climate change.

**Combined 3rd-5th reports: Malawi- CRC/C/MWI/CO/3-5 [March 6, 2017]**

36. The Committee draws attention to target 13.B of the Sustainable Development Goals to promote mechanisms for raising capacity for effective climate change-related planning and management. In particular, it recommends that the State party:

- (a) Ensure that its disaster risk management policy is disseminated and implemented with sufficient budget;
- (b) Integrate disaster risk reduction into development planning;
- (c) Document and register the persons affected, particularly vulnerable groups such as children, as part of the disaster response, to ensure that they receive appropriate and timely health, protection and other services;
- (d) Increase children's awareness and preparedness for climate change and natural disasters by incorporating it into the school curriculum and teacher training programmes.

**Environmental Health.**

**Combined 3rd-6th reports: Malta- CRC/C/MLT/CO/3-6 [June 26, 2019].**

37. The Committee is concerned about the harmful effects of the high level of air pollution in the State party, particularly from road transport, on the climate and on children's health. Taking note of target 3.9 of the Sustainable Development Goals, it recommends that the State party:

- (b) Place the rights and participation of children at the centre of national and international climate change adaptation and mitigation strategies.

**Combined 5th-6th reports: Spain- CRC/C/ESP/CO/5-6 [March 5, 2018]**

36. The Committee recommends that the State party carry out an assessment of the impact of air pollution from coal-fired power plants on children's health and on the climate as a basis for designing a well-resourced strategy to

remedy the situation, and strictly regulate maximum air-pollutant emissions, including those by produced private businesses.

### **Environmental Health and Climate Change.**

#### **Combined 5th and 6th reports: Belgium- CRC/C/BEL/CO/5-6 [February 28, 2019]**

35. The Committee notes a high level of air pollution, particularly from road transport, in the State party and its negative impact on the climate and on children's health, contributing to an increase in asthma and respiratory diseases, while their exact prevalence remains unknown. Taking note of targets 3.9 and 13.5 of the Sustainable Development Goals, the Committee recommends that the State party:

- (a) Conduct an assessment of the impact of air pollution on children's health and a study on the prevalence of asthma and respiratory diseases in children as a basis for designing a well-resourced strategy to remedy the situation, and regulate the maximum concentrations of air-pollutant emissions, including from road transport;
- (b) Develop a comprehensive national plan for reducing the level of greenhouse emissions to prevent dangerous climate impact, while ensuring that the special vulnerabilities and needs of children, as well as their views, are taken into account;
- (c) Strengthen awareness-raising of environmental health and climate change among children, with the active participation of schools.

## Appendix E

### **CRC CONCLUDING OBSERVATIONS 2017-APRIL 2020 DISCUSSION OF CLIMATE CHANGE- VIEWS OF THE CHILD**

#### III. Main areas of concern and recommendations

##### C. General Principles

##### Respect for the Views of the Child

6th Report: Hungary CRC/C/HUN/CO/6 [March 3, 2020]

(e) Strengthen initiatives aimed at increasing child participation and develop toolkits for consulting children on national policy issues that affect them – in particular the issues that children identified as being of most concern for them, such as education, climate change and security – and ensure that children's views are taken into account by local and national authorities.

Combined 5th and 6th Report: Australia CRC/C/AUS/CO/5-6 [November 1, 2019]

(e) Develop toolkits for holding public consultations with children on issues that affect them, including on climate change and the environment.

**Appendix F****CRC CONCLUDING OBSERVATIONS 2017-APRIL 2020-  
NO DISCUSSION OF CLIMATE CHANGE**

Initial report: State of Palestine- CRC/C/PSE/CO/1 [March 6, 2020]

Combined 5th- 6th reports: Costa Rica- CRC/C/CRI/CO/5-6 [March 4, 2020]

Combined 5th-6th reports: Belarus- CRC/C/BLR/CO/5-6 [February 28, 2020]

Combined 5th- 6th reports: Portugal- CRC/C/PRT/CO/5-6 [December 9, 2019]

Combined 5th- 6th reports: Bosnia and Herzegovina- CRC/C/BIH/CO/5-6  
[December 5, 2019]

Combined 3rd-4th reports: Mozambique- CRC/C/MOZ/CO/3-4 [November 27, 2019]

Combined 5th-6th reports: Republic of Korea- CRC/C/KOR/CO/5-6 [October 24, 2019]

2nd report: Cote d'Ivoire- CRC/C/CIV/CO/2 [July 12, 2019]

Combined 2nd-3rd report: Botswana- CRC/C/BWA/CO/2-3 [June 26, 2019]

5th report: Syrian Arab Republic- CRC/C/SYR/CO/5 [March 6, 2019]

Combined 5th-6th report: Italy- CRC/C/ITA/CO/5-6 [February 28, 2019]

Combined 4th-6th reports: Bahrain- CRC/C/BHR/CO/4-6 [February 27, 2019]

Combined 5th-6th reports: El Salvador- CRC/C/SLV/CO/5-6 [November 28, 2018]

Combined 3rd-5th reports: Mauritania- CRC/C/MRT/CO/3-5 [November 26, 2018]

Combined 3rd-6th reports: Lao People's Democratic Republic- CRC/C/LAO/CO/3-6 [November 1, 2018]

Combined 5th-6th reports: Argentina- CRC/C/ARG/CO/5-6 [October 1, 2018]

Combined 5th-6th reports: Norway- CRC/C/NOR/CO/5-6 [June 4, 2018]  
[Mentions the negative impact of fossil fuels]

Combined 5th-7th reports: Angola- CRC/C/AGO/CO/5-7 [June 27, 2018]

2nd report: Lesotho- CRC/C/LSO/CO/2 [June 25, 2018]

Combined 2nd-3rd reports: Montenegro- CRC/C/MNE/CO/2-3 [June 22, 2018]

Combined 5th-6th reports: Seychelles- CRC/C/SYC/CO/5-6 [March 5, 2018]

Combined 5th-6th reports: Panama- CRC/C/PAN/CO/5-6 [February 28, 2018]

5th report: Denmark- CRC/C/DNK/CO/5 [October 26, 2017]

Combined 5th-6th report: Ecuador- CRC/C/ECU/CO/5-6 [October 26, 2017]

Combined 4th-5th report: Moldova- CRC/C/MDA/CO/4-5 [October 20, 2017]

5th report: Romania- CRC/C/ROU/CO/5 [July 13, 2017]

Combined 3rd-5th reports: Cameroon- CRC/C/CMR/CO/3-5 [July 6, 2017]

Combined 4th-5th reports: Lebanon- CRC/C/LBN/CO/4-5 [June 22, 2017]

Combined 3rd-4th reports: Qatar- CRC/C/QAT/CO/3-4 [June 22, 2017]

4th report: Georgia- CRC/C/GEO/CO/4 [March 9, 2017]

Combined 2nd-4th reports: Estonia- CRC/C/EST/CO/2-4 [March 8, 2017]

2nd report: Central African Republic- CRC/C/CAF/CO/2 [March 8, 2017]

Combined 2nd-3rd report: Serbia- CRC/C/SRB/CO/2-3 [March 7, 2017]

2nd report: Barbados- CRC/C/BRB/CO/2 [ March 3, 2017].

3rd-5th reports: Democratic Republic of Congo- CRC/C/COD/CO/3-5 [February 28, 2017]

## Appendix G

### PROPOSED STRUCTURE OF CRC CONCLUDING OBSERVATIONS “CLIMATE AND THE RIGHT TO [A DIGNIFIED] LIFE” [Fictitious]

Concluding observations on the first periodic report of the United States of America

#### III. Main areas of concern and recommendations

5. The Committee would like to draw the State party’s attention to the recommendations concerning the following areas, in respect of which urgent matters must be taken: climate and the right to a [dignified] life (para. 22 ); ... .

#### C. Climate and the right to a [dignified] life

22.

23.

#### Climate and the business sector

24.

25.

#### Climate and the participation of children

26.

27.

[Reserved for future permanent category, e.g., Climate and the role of civil society]

[Subsections contingent on the circumstances of the particular nation-state, e.g., Climate and ... the right to protection from all forms of violence, the right to an education, the right to an adequate standard of living, the right to special care if disabled, the right to protection from economic or sexual exploitation, the right to water, sanitation and hygiene, the right to culture, and the right to physical and mental health and nutrition.]

**TABLE H****THE NATION-STATES THAT HAVE RATIFIED CRC OPIC [as of July 10, 2020]  
[Source- UN Treaties Collection]**

Albania	May 29, 2013	Andorra	September 25, 2014
Argentina	April 14, 201	Belgium	May 30, 2014
Benin	August 19, 2019	Bolivia	April 2, 2013
Bosnia & Herzegovina	May 17, 2017	Brazil	September 29, 2017
Chile	September 1, 2015	Costa Rica	January 14, 2014
Croatia	April 18, 2017	Cyprus	September 11, 2017
Czech Republic	December 2, 2015	Denmark	October 7, 2015
Ecuador	September 19, 2018	El Salvador	February 9, 2015
Finland	November 12, 2015	France	January 7, 2016
Gabon	September 25, 2012	Georgia	September 19, 2016
Germany	February 28, 2013	Ireland	September 24, 2014
Italy	February 4, 2016	Liechtenstein	January 25, 2017
Luxembourg	February 12, 2016	Maldives	September 27, 2019.
Marshall Is.	January 29, 2019	Monaco	September 24, 2014
Mongolia	September 28, 2015	Montenegro	September 24, 2013
Panama	February 16, 2017	Paraguay	January 20, 2017
Peru	January 6, 2016	Portugal	September 24, 2013
Samoa	April 29, 2016	San Marino	September 26, 2018
Slovakia	December 3, 2013	Slovenia	May 25, 2018
Spain	June 3, 2013	Palestine	April 10, 2019
Switzerland	September 25, 2017	Thailand	September 25, 2012
Tunisia	December 14, 2018	Turkey	December 26, 2017

Ukraine

September 2, 2016

Uruguay

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