



**Center for International
Environmental Law**

October 28, 2017

Oslo District Court
C. J. Hambros plass 4
0164 Oslo, Norway

Re: *GREENPEACE NORDIC ASSOCIATION & NATUR OG UNGDOM v.
THE GOVERNMENT OF NORWAY* (Case No: 16-166674TVI-OTIR/06)

To the Honorable Members of the Court:

The Center for International Environmental Law (CIEL) is a not-for-profit legal research and advocacy organization that uses the power of law to protect the environment, promote human rights and ensure a just and sustainable society. CIEL respectfully submits the attached *amicus curiae* brief for the consideration of the Court in the above-captioned matter.

We hope that the information and analysis herein will prove useful to the Court in its deliberations on this important case.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Carroll Muffett", is written over a horizontal line.

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**Center for International
Environmental Law**

November 5, 2017

Oslo District Court
C. J. Hambros plass 4
0164 Oslo, Norway

Re: *GREENPEACE NORDIC ASSOCIATION & NATUR OG UNGDOM v.
THE GOVERNMENT OF NORWAY* (Case No: 16-166674TVI-OTIR/06)

To the Honorable Members of the Court:

On 31st October 2017, the Center for International Environmental Law (CIEL) submitted an *amicus curiae* brief for the consideration of the Court in the above-captioned matter.

CIEL wishes to inform the court that the signatories below express their support for the Amicus Brief, its content and analysis regarding the rights of future generations in international law.

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- **Ms. Christiana Figueres,**
Former Executive Secretary UNFCCC and Convenor, Mission 2020
Signing as an individual.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Carroll Muffett', written in a cursive style.

Carroll Muffett
President & CEO

GREENPEACE NORDIC ASSOCIATION & NATUR OG UNGDOM (NATURE & YOUTH),
Plaintiffs,

Against

THE GOVERNMENT OF NORWAY,
represented by the Ministry of Petroleum and Energy,
Defendant.

Case No: 16-166674TVI-OTIR/06

AMICUS CURIAE BRIEF

SUBMITTED BY THE CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

October 28, 2017

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1. ABOUT THE CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

The Center for International Environmental Law (CIEL) is a nonprofit organisation that uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. Since 1989, CIEL has been a leader in the development of environmental and human rights law, including with respect to climate change and to the interlinkages between human rights and climate policies. CIEL respectfully submits the legal analysis herein as *amicus curiae* to the Court.

Under article 15.8 of the Norwegian Dispute Act, written submissions may be submitted by “organisations and associations within the purpose and normal scope of the organisation” in order to “throw light on matters of public interest.”¹ The present case concerns the impact of recently awarded Norwegian petroleum production licenses on global climate change and the long-term adverse impacts of these licenses. Climate change is a matter of great public interest in Norway and throughout the world. As emphasized in the preamble of the United Nations Framework Convention on Climate Change and of the Paris Climate Agreement, “change in the earth’s climate and its adverse effects are a common concern of humankind.”²

Given that the present case relates both to climate change and to the interpretation of international norms related to human rights in the context of climate policies, CIEL has a significant interest in sharing with the Court its relevant expertise and research with respect to the compatibility of the disputed licenses with the Norwegian State’s obligations under its constitutional and international human rights obligations.

In this submission, the Center for International Environmental Law seeks to contribute to the Court’s review of the conformity of the petroleum production licenses in the 23rd licensing round with article 112 of the Norwegian Constitutions by providing additional information regarding: (1) the emergence of intergenerational equity - including as a principle of and the recognition of the rights of future generations - in international environmental law and a wide range of national legal systems, (2) the duties of the States provided by international human rights instruments in matters related to environmental policy, and (3) the obligations of the State related to the rights of children of relevance in the context of decisions that will result in long-term damage to the environment.

¹ Norway, *The Dispute Act (Act No. 90 of June 17, 2005, relating to Mediation and Procedure in Civil Disputes) (consolidated version of 2013)*, 2013, article 15.8.

² United Nations, *The United Nations Framework Convention on Climate Change*, adopted in June 1992, 1701 UNTS 107 (hereinafter “UNFCCC”), preamble; UNFCCC, *The Paris Agreement*, adopted in December 2015, [C.N.63.2016.TREATIES-XXVII.7.d](#) of 16 February 2016, preamble.

2. POSITIVE DUTIES OF THE STATE TOWARDS FUTURE GENERATIONS

Norway has expressly acknowledged and legally protected the right to a healthy environment in its national constitution. Significantly, Norway has explicitly safeguarded this right not only for present generations, but for generations yet to come. Article 112 of the Norwegian Constitution affirms that:

“Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the State of the natural environment and on the effects of any encroachment on nature that is planned or carried out.

The authorities of the State shall take measures for the implementation of these principles.”³

This provision expressly imposes upon the government of Norway an affirmative duty to manage natural resources in a manner that protects the right of future generations to a healthy environment.

This section examines the longstanding recognition of the principle of intergenerational equity within international law and of the resulting recognition by a growing number of States of their resulting legal duties to consider the interests and uphold the rights of future generations in matters related to the environment. After first briefly reviewing the emergence of intergenerational equity as a principle of international environmental law, we document how this principle and duty have been recognized in a large number of legal systems either through constitutional provisions or through jurisprudence. We conclude the section by reviewing Norway’s international human rights obligations and the resulting obligations they create for the Norwegian State to protect the environment in a manner that guarantees future generations can enjoy their rights.

2.1. INTERGENERATIONAL EQUITY AS A PRINCIPLE OF INTERNATIONAL ENVIRONMENTAL LAW

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

Recognition of and respect for these principles inheres in the foundational documents of the UN system and they have been reaffirmed, amplified, elaborated and progressively

³ Grunnloven, , May 17, 1814 (amended May 2014), article. 112, official English translation available at <https://www.stortinget.no/globalassets/pdf/english/constitutionenglish.pdf>.

operationalized through nearly seven decades of international law, policy and--to an insufficient extent--practice.

The principle of responsibility towards future generations is embodied in the the core objectives of the 1945 UN Charter, beginning by stressing the necessity to save succeeding generations from the scourge of war.⁴ Since 1945 this principle has been reiterated through key consensual declarations regarding the principles of international environmental law and in numerous legally-binding multilateral agreements.

The 1972 Stockholm Declaration on the Human Environment begins by highlighting that man “bears a solemn responsibility to protect and improve the environment for present and future generations.”⁵ It further stresses that

*The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.*⁶

This principle was repeatedly reaffirmed in the report of the 1987 World Commission on Environment and Development, widely known as the Brundtland Commission.⁷ The report defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁸ The report further emphasized that “sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development; and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations.”⁹ The Brundtland Commission emphasized that meeting this obligation of sustainability requires the enforcement of wider responsibilities for the impacts of decisions. [...]Some necessary changes in the legal framework start from the proposition that an environment adequate for health and well-being is essential for all human beings including future generations.”¹⁰

⁴ United Nations, *Charter of the United Nations*, adopted in June 1945, preamble.

⁵ United Nations, *The Stockholm Declaration on the Human Environment*, adopted in June 1972, UN Doc. A/Conf.18/14/Rev 1(1973) (hereinafter “Stockholm Declaration”), principle 1.

⁶ *Stockholm Declaration*, principle 2.

⁷ *Report of the World Commission on Environment and Development to General Assembly, “Our Common Future”* ([A/42/427](#), 4 August 1987) (hereinafter, “Brundtland Report”).

⁸ *Brundtland Report*, paragraph 1.

⁹ *Brundtland Report*, paragraph 15.

¹⁰ *Brundtland Report*, paragraph 76.

The 1992 Rio Declaration on the Environment and Development crystallized these obligations to future generations as an emerging principle of international environmental law, highlighting that the “right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”¹¹

Forty-four international legal instruments explicitly incorporate or reference the principle of intergenerational equity and/or to the need to preserve the rights and the interests of future generations. Norway is party to the vast majority of these instruments.¹²

The international legal regime established under the 1992 UN Framework Convention on Climate Change (UNFCCC) also builds upon and reiterates the principle of international equity and the need to protect the climate system for future generations. The resolution adopted in 1990 by the UN General Assembly to provide a mandate for the negotiations of a new legal instrument aimed at addressing climate change explicitly refers to the “protection of global climate for present and future generations of mankind”.¹³ This objective is recalled in the preamble of the UNFCCC.¹⁴ Article 3 of the UNFCCC defining the principles for the new regime provides that “the parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.” The Paris Climate Agreement adopted in 2015 reiterates the principle, recalling that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights [...] as well as intergenerational equity.”¹⁵

Still other international legal agreements elaborate on the how the duties owed to future generations both underly and inform the other obligations defined in their provisions. The UN Economic Commission for Europe (UNECE) Aarhus Convention, for example, highlights that the guarantee of procedural rights in environmental decision-making is necessary to “contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being”.¹⁶ The UN

¹¹ Report of the United Nations Conference on Environment and Development, 3 to 14 June 1992 ([A/CONF.151/26/Rev. 1 \(Vol. I\)](#), [A/CONF.151/26/Rev. 1 \(Vol. II\)](#), [A/CONF.151/26/Rev. 1 \(Vol. III\)](#)) (hereinafter “Rio Declaration”), principle 3.

¹² See Annex 2.

¹³ United Nations, *General Assembly Resolution on the Protection of global climate for present and future generations of mankind*, A/RES/45/212, 21 December 1990.

¹⁴ UNFCCC, preamble.

¹⁵ Paris Agreement, preamble.

¹⁶ UNECE, *Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters*, adopted in June 1998. 2161 UNTS 447, (hereinafter, “Aarhus Convention”), article 1.

Educational, Scientific and Cultural Organisation (UNESCO) Convention stresses the “duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage.”¹⁷ The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes provides that “[w]ater resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.”¹⁸

The International Court of Justice relied on the principle of sustainable development and its intergenerational component in its ruling on the *Gabcíkovo-Nagymaros* dispute.¹⁹ Taking stock of the normative developments described previously, the Court emphasized that

*“Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.”*²⁰

Judges of the International Court of Justice have increasingly relied on this principle. In a 1993 opinion in *Denmark v Norway*, Judge Weeramantry emphasized that global jurisprudence supported the notion of equity, with “respect for the rights of future generations, and the custody of earth resources with the standard of due diligence expected of a trustee” as the key principle contained in this notion.²¹

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

“... the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and

¹⁷ UNESCO, *Convention Concerning the Protection of the World Cultural and Natural Heritage*, adopted in November 1972, 1037 UNTS 151; 11 ILM 1358 (1972), article 4.

¹⁸ UNECE, *Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, adopted in November 1992, 1936 UNTS 269, article 5.c.

¹⁹ *Gabcikovo-Nagymaros Project (Hungary/ Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7.

²⁰ *Id.*, paragraph 140.

²¹ *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, *Separate opinion of Judge Weeramantry*, Judgment, I.C.J. Reports 1993, , paragraph 240.

control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.”²²

Judge Weeramantry stressed that:

*“... the rights of future generations have passed the stage when they were merely an embryonic right struggling for recognition. They have woven themselves into international law through major treaties, through juristic opinion and through general principles of law recognized by civilized nations”.*²³

The recognition of the principles of sustainable development and inter-generational equity was reiterated more recently by Judge Cançado Trindade in the *Pulp Mills* case.²⁴

Several authoritative analyses also support the recognition of intergenerational equity as a principle that must guide environmental policies. These statements are relevant to the present case given that “judicial decisions and the teachings of the most highly qualified publicists of the various nations” shall serve as subsidiary means for the determination of rules of law.²⁵

The International Law Association (ILA), in its 2002 New Delhi Declaration on the Principles of International Law relating to Sustainable Development, recognized that the principle of equity is a key component of international law.²⁶ The ILA stressed that the principle of equity refers to “both inter-generational equity (the right of future generations to enjoy a fair level of the common patrimony) and intra-generational equity”.²⁷ It emphasized that “the present generation has a right to use and enjoy the resources of the Earth but is under an obligation to take into account the long-term impact of its activities and to sustain the resource base and the global environment for the benefit of future generations of humankind”.²⁸ The ILA further insisted on the importance of the principle of “integration and interrelationship, in particular in relation to human rights and social,

²² ICJ Reports 1996, pp 241-242, para. 29. This paragraph is also cited in the Court’s ruling in *Gabčíkovo-Nagymaros Project (Hungary-Slovakia)*, Judgment (ICJ Reports 1997) para. 53 & 112.

²³ Dissenting from the Court’s split decision (seven votes to seven, decided by President’s casting vote) that: “the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.”

²⁴ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Separate Opinion of Judge Cançado Trindade, Judgment, I.C.J. Reports 2010, p. 164.

²⁵ *Statute of the International Court of Justice*, article 38.1.d.

²⁶ *ILA New Delhi Declaration on the Principles of International Law relating to Sustainable Development* (and commentary), 2002 (hereinafter “New Delhi Declaration”).

²⁷ *Id.*, paragraph 2.1.

²⁸ *Ibid.*, paragraph 2.2.

economic and environmental objectives”, noting that this principle reflected the interdependence of the needs of current and future generations.²⁹

The duty to preserve the environment for the future generations is also acknowledged by the Institut de Droit International. In its 1997 resolution on responsibility and liability under international law for environmental damage, the Institute emphasized that “Impairment of [...] inter-generational equity, and generally equitable assessment should be considered as alternative criteria for establishing a measure of compensation” for environmental damage.³⁰

Significantly for purposes of the present case, the International Law Commission’s rapporteur on the issue of the obligation of States to protect the atmosphere noted in his 2016 report to the Commission that the principle of equity that guides the international response to climate change “calls for an intergenerational equitable balance between the present generation and future generations of humankind”.³¹ The rapporteur amplified and further elaborated this point in his 2017 report, observing that “equitable and reasonable utilization of the atmosphere should also take into account the interests of future generations of humankind.”³² The rapporteur further observed the growing incidence of domestic court decisions in a number of countries upholding the rights of minors to challenge government actions with respect to climate change, and the recognition of standing in such suits on the grounds, *inter alia*, that governments are “trustees for the management of common environmental resources.”³³

2.2. OBLIGATION OF NATIONAL GOVERNMENTS TO PROTECT THE RIGHT OF FUTURE GENERATIONS TO A HEALTHY ENVIRONMENT

The rights of future generations or the principle of intergenerational equity in matters related to environmental policies are recognized and protected in a rapidly growing number of national constitutions. At present, no fewer than sixty-three national constitutions include explicit provisions articulating the right of future generations to a healthy environment, define duties for the States towards future generations or enshrine

²⁹ *Ibid.*, paragraph 7.1

³⁰ Institut de Droit International, *Resolution on Responsibility and Liability under International Law for Environmental Damage* 1997.

³¹ United Nations, General Assembly, *Report of the International Law Commission, Sixty-eighth session (2 May-10 June and 4 July -12 August 2016)*, Chapter VIII Protection of the Atmosphere, A/71/10, 2016, p. 281.

³² United Nations, General Assembly, *Report of the International Law Commission, Sixty-ninth session (1 May-2 June and 3 July-4 August 2017)*, *Fourth Report on the Protection of the Atmosphere*, A/CN.4/705 (31 January 2017), paragraph 87.

³³ *Id.* paragraph 88.

intergenerational equity as a core principle for environmental and developmental policies.³⁴ The number of these constitutional provisions has increased four-fold over the past thirteen years, reflecting the growing and increasingly commonplace recognition by States of the rights of future generations and the principle of intergenerational equity. The incorporation of these principles in subnational constitutions within many countries, (including, for example, several US states) affords further evidence of their increasing recognition as general principles of law within many of the world's legal systems.

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

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

In 1987 the Supreme Court of India invoked the principle of intergenerational equity as provided in the Stockholm Declaration in concluding that the State must endeavor to protect and improve the environment and to safeguard the country's ecosystems.³⁵ In the ensuing decades, judicial rulings in ten jurisdictions have relied on the concept of intergenerational equity to order the States to protect the environment or to cancel administrative decisions that had been made without sufficiently taking into account the interests of future generations.

In *Oposa v. Factoran*, the Supreme Court of the Philippines accepted that plaintiffs could file a petition on behalf of succeeding generations to denounce logging licences. The Court ruled that "their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned."³⁶ A Dutch district court also accepted to consider the petitioning organization could represent the interests of current and future generations of Dutch nationals.³⁷

³⁴ See Annex 1.

³⁵ *M.C. Mehta v. Union of India and others*, Supreme Court of India, December 20, 1986. 1987 SCR (1) 819.

³⁶ *Oposa et al. v. Fulgencio S. Factoran, Jr. et al* (G.R. No. 101083), Supreme Court of the Philippines, 30 July 1993.

³⁷ *Urgenda Foundation v. The State of the Netherlands*, C/09/456689/HA ZA 13-1396, Hague District Court, 24 June 2015 (hereinafter, "Urgenda").

The *Oposa* ruling affirmed that natural resources are held in trust for the benefit of present and future generations and that the government was consequently required to protect this resource. Courts in other countries have built on the recognition of the public trust doctrine to request that the government protects national parks (Australia), rivers (Kenya) and forests (India) for the benefit of present and future generations.³⁸

Jurisprudence from the highest levels of judiciary in many countries provides guidance regarding the scope of obligations owed vis a vis future generations. In the *Manila Bay Case*, the Supreme Court of the Philippines stressed that even in the absence of a categorical legal provision specifying the legal obligations of the authorities with regards to the protection of the waters of the Bay, the authorities “cannot escape their obligation to future generations”.³⁹ The Supreme Court of India ruled in *Indian Council for Enviro-Legal Action v. Union of India* that the government must enforce environmental laws effectively as violation of these laws would result in pollution, the “adverse effect of which will have to be borne by the future generations.”⁴⁰ In *M.C. Mehta v. Union of India*, the Court concluded that, in the absence of adequate action by the government, “it becomes the duty of the Court to direct such steps being taken are necessary for cleaning the air so that the future generations do not suffer from ill-health.”⁴¹

In *Jagannath vs Union Of India & Ors*, India's Supreme Court requested an environmental and social impact assessment to be conducted prior to the authorization of new shrimp processing facilities.⁴² The Court ruled that such assessment should specifically “take into consideration the inter-generational equity”. The Supreme Court reached a similar conclusion in a case related to licenses for logging granted without prior assessment of the long-term implications of the exploitation of these natural resources.⁴³ The Court stressed that “the present generation has no right to deplete all the existing forests and leave nothing

³⁸ *Willoughby City Council v Minister Administering the National Parks and Wildlife Act, Land and Environment Court of New South Wales*, (1992) 78 LGERA 19 (ss 47B, 47G, 471); *Peter K. Waweru (applicant) and Republic (respondent)*, (2007) AHRLR 149 (KeHC 2006), High Court of Kenya at Nairobi, 2 March 2006; *State of Himachal Pradesh and others (Appellants) v. Ganesh Wood Products and others (Respondents)*, AIR 1996 SC 149, Supreme Court of India, 11 September 1995.

³⁹ *Metropolitan Manila Bay Development Authority v Concerned Residents of Manila Bay.*, G.R. Nos. 171947-48, Supreme Court of the Philippines, 18 December 2008.

⁴⁰ *Indian Council for Enviro-Legal Action and others v. Union of India and others*, 1996 AIR 1446, Supreme Court of India, 13 February 1996.

⁴¹ *M.C. Mehta v. Union of India, Tanneries Case*, AIR 1997 SC 734, Supreme Court of India, 22 September 1987.

⁴² *S. Jagannath vs Union of India & Ors*, (1996) INSC 1592, Supreme Court of India, 11 December 1996.

⁴³ *State of Himachal Pradesh and others v. Ganesh Wood Products and others*, AIR 1996 Supreme Court 149, Supreme Court of India, 11 September 1995.

for the next and future generations.” In a case related to the installation of a fossil fuel processing facility, the Supreme Court of India drew on the principle of intergenerational equity as reflected in several multilateral environmental agreements to find an affirmative duty on the part of the present generation towards generations to come.⁴⁴

2.2.1. DUTIES TO REGULATE CORPORATE ACTIVITIES THAT ADVERSELY IMPACT RIGHTS OF FUTURE GENERATIONS

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

In *Rodgers Muema Nzioka v. Tiomin Kenya Ltd*, the High Court of Kenya cited the principle of intergenerational equity to grant an injunction restraining a mining company from carrying out acts that would be particularly damaging for the environment.⁴⁵ In a similar case in Sri Lanka, the court invoked the principle of intergenerational equity to prohibit mining conducted in a manner that would undermine the interests of future generations.⁴⁶ The Supreme Court of India ruled in *Water Users Association v. The Gov of A.P. W.P* that the granting of irrigation licenses by the authorities must be informed by the principle of sustainable development as defined in the 1987 report of the Brundtland Commission.⁴⁷ In *Soman v. Geologist*, the Kerala High Court rejected a request to lift environmental regulations imposed on a petitioner, holding that the quality of the soil must be preserved for future generations.⁴⁸ In a subsequent case, the Supreme Court ruled again that the principle of sustainable development, in its emphasis on the necessity to preserve the ability for future generations to meet their own needs, should be followed “in letter and spirit”. The Court thereby ordered the protection of grazing land and rejected its acquisition for an industrial project.⁴⁹ In *K.M. Chinnappa v. Union of India W.P.*, the Supreme Court again

⁴⁴ *A.P. Pollution Control Board v. Prof. M.V. Nayudu* (Retd.) S.O.L. Case No. 53, Supreme Court of India, 15 March 1999.

⁴⁵ *Rodgers Muema Nzioka v. Tiomin Kenya Ltd* (97 of 2001), Civil Case No. 97 of 2001, High Court of Kenya at Mombasa, 21 September 2001.

⁴⁶ *Bulankulama v. Min. of Industrial Development (Eppawala case)*, (2000) LKSC 18, Court of Sri Lanka, 7 April 2000.

⁴⁷ *Water Users Association v. The Gov of A.P. W.P.*, High Court of Judicature of Andhra Pradesh at Hyderabad, 6 February 2002.

⁴⁸ *Soman v. Geologist*, 2004 (3) KLT 577, Kerala High Court (India), 24 August 2004.

⁴⁹ *Karnataka Industrial Areas. vs Sri C. Kenchappa & Ors*, Supreme Court of India, AIR 1996 SC 1350 (2006), 12 May 2006.

relied on this principle to order the protection of forests threatened by the exploitation of mineral resources.⁵⁰ The Court stated as follows:

*We owe a duty to future generations and for a bright today, bleak tomorrow cannot be countenanced. We must learn from our experiences of past to make both the present and the future brighter. We learn from our experiences, mistakes from the past, so that they can be rectified for a better present and the future.*⁵¹

South Africa's Supreme Court of Appeal also referred to the necessity to preserve the ability of future generations to meet their own needs in a judgment confirming an administrative decision to cancel a coal mining license due to consequences for sustainable development.⁵² The Argentinian National Supreme Court of Justice has also invoked the necessity to prevent long-term and irremediable damage that would affect future generations to justify the cancellation of logging and clearing licenses.⁵³ In *Salas, Dino y otros v Salta, Provincia de y Estado Nacional*, the court stated that “[one] should not look for opposition between [the protection of the environment and development], but complementarity, since the protection of the environment does not mean stopping progress, but, on the contrary, making it more enduring over time so that future generations can enjoy it.”

The decision of the Supreme Court of Pennsylvania in the *Robinson Township v. Commonwealth of Pennsylvania* case is also particularly informative in the context of the petition submitted by Greenpeace and Natur og Ungdom.⁵⁴ The court was asked to review the conformity of an expedited procedure for the approval of shale gas licenses with article 1 section 27 of the Pennsylvania Constitution. This provision shares key similarities with article 112 of the Norwegian Constitution, in particular its reference to future generations and its provision of a positive duty for the State. Article 1 section 27 reads as follow:

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

⁵⁰ *K.M. Chinnappa, T.N. Godavarman Thirumalpad v. Union of India & Ors*, (2002) SC 1386, Supreme Court of India, 30 October 2002.

⁵¹ *Id.*

⁵² *The Director: Mineral Development, Gauteng Region, Sasol Mining (PTY) LTD/V. Save the Vaal Environment, Ronsand ranch (PTY) LTD, Giovanni Alberto Mario Ravazzotti, Susan Sellschop, Lynne Dale Green*, [1996] 1 All SA 2004 (T), Supreme Court of Appeal of South Africa, 12 March 1999.

⁵³ *Salas, Dino y otros C/ Salta, Provincial de y Estado Nacional s/ amparo.*, S. 1144. XLIV, Corte Suprema de Justicia de la Nación, Capital Federal, Ciudad Autonoma de Buenos Aires, 26 March 2009

⁵⁴ *Robinson Township v. Commonwealth of Pennsylvania, Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (plurality), Supreme Court of Pennsylvania, 2012. The Pennsylvania Supreme Court reaffirmed and extended this ruling in [Pennsylvania Environmental Defense Foundation v. Commonwealth](#), No. 10 MAP 2015 (Pa. June 20, 2017).

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

The court held the expedited procedure unconstitutional as it failed to preserve the interests of future generations. It noted that “The second, cross-generational dimension of Section 27 reinforces the conservation imperative: future generations are among the beneficiaries entitled to equal access and distribution of the resources, thus, the trustee cannot be short-sighted.” The court further argued that “section 27 recognizes the practical reality that environmental changes, whether positive or negative, have the potential to be incremental, have a compounding effect, and develop over generations. The Environmental Rights Amendment offers protection equally against actions with immediate severe impact on public natural resources and against actions with minimal or insignificant present consequences that are actually or likely to have significant or irreversible effects in the short or long term.”⁵⁵

2.2.2. DUTIES OF THE STATE TO CONSIDER INTERGENERATIONAL EQUITY IN GOVERNMENT ACTIONS AFFECTING CLIMATE CHANGE

Courts in the Netherlands and in Pakistan have ruled that intergenerational equity must inform national climate policies. In the *Urgenda* decision, the court found that “the State, in choosing measures, will also have to take account of the fact that the costs are to be distributed reasonably between the current and future generations.”⁵⁶ In the *Ashgar Leghari v. Federation of Pakistan* ruling, the Supreme Court of Pakistan stated that, when defining the legal obligations of the State to protect its citizens from the impacts of climate change, fundamental rights must be “read with [...] the international environmental principles of sustainable development, [...] inter and intra-generational equity and public trust doctrine.”⁵⁷

2.3. DUTIES TO FUTURE GENERATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

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

⁵⁵ *Robinson Township*, *supra* note 54.

⁵⁶ *Urgenda*, *supra* note 37.

⁵⁷ *Ashgar Leghari v. Federation of Pakistan*, (W.P. No. 25501/2015), Lahore High Court Green Bench, 25 September 2015.

obligations towards future people is thus argued to be simply the equal concern and respect we owe to all humans, regardless of where and when they may have been born.”⁵⁸

Norway has ratified many international human rights treaties, including the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the ILO Convention 169 on Indigenous and Tribal Peoples Convention and the Convention on the Elimination of All Forms of Racial Discrimination (CERD).⁵⁹

Pursuant to these treaties, the Norwegian government has undertaken binding legal commitments to the international community to ensure certain minimum standards of protection for all those within its jurisdiction.⁶⁰ These commitments provide a large, consistent and relevant body of guidance upon which the Court can draw in interpreting constitutional provisions related to the protection and respect of human rights, including article 112. The ECHR, the ICCPR and the ICESCR, and authoritative interpretations thereof, are of particular relevance in this regard, because pursuant to the Human Rights Act of 1999, they have “the force of Norwegian law” and “shall take precedence over any other legislative provisions that conflict with them.”⁶¹ Their relevance in the present context is amplified by the Paris Agreement’s injunction that parties “should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights” including the right to intergenerational equity.⁶²

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

The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. The

⁵⁸ United Nations, General Assembly Report, *Intergenerational solidarity and the needs of future generations Report of the Secretary-General*, A/68/322, August 2013.

⁵⁹ See Annex 2.

⁶⁰ *Constitution of the Kingdom of Norway*, article 92, 1814, rev. 2015

⁶¹ *Human Rights Act (No. 30 of 1999)*, Act relating to the strengthening of the status of human rights in Norwegian law, entered into force 21 May 1999.

⁶² *Paris Agreement*, preamble.

*precise meaning of “adequacy” is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while “sustainability” incorporates the notion of long-term availability and accessibility.*⁶³

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

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

*28. States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations.*⁶⁴

UN Special Procedures mandated by the Human Rights Council have further elaborated the responsibilities of States towards future generations on the basis of international human rights instruments. In his 2008 report, the UN Special Rapporteur on toxic and dangerous products noted that “States need to take into account the future costs and long-term consequences of environmental degradation, as well as their obligation to save future generations from a multitude of health problems.”⁶⁵ Building on the CESCR general content related to the right to water, the Special Rapporteur on safe drinking water pointed to the obligation for the government of Uruguay to “ensure the realization of the right to water, in a sustainable manner and without discrimination, for present and future generations”.⁶⁶

The UN Special Rapporteur on extreme poverty also addressed this specific issue in a manner that is directly relevant to the present case. In its 2012 report on its mission to Timor, the Special Rapporteur recommended that the government “must strengthen efforts

⁶³Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 12: The Right to Adequate Food (Art. 11)*, E/C.12/1999/5 (12 May 1999).

⁶⁴ Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, E/C.12/2002/11 (20 January 2003).

⁶⁵ United Nations, General Assembly, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report of the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, Okechukwu Ibeanu*, A/HRC/9/22, August 2008.

⁶⁶United Nations, General Assembly, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Mission to Uruguay (13 to 17 February 2012)*, A/HRC/21/42/Add.2, July 2012.

to diversify the non-oil economy, build sustainable industries, and ensure the preservation of its natural resources for future generations”.⁶⁷

This section has highlighted the guidance provided by a diverse set of legal norms and jurisprudence on interpreting the obligations of the Norwegian State towards future generations under article 112 of the Norwegian Constitution. This indicates the positive legal obligations on States to prevent environmental damage and to prohibit and regulate activities by private actors that might adversely affect the ability of future generations to equitable enjoyment of their human rights.

3. SCOPE OF THE LEGAL OBLIGATIONS OF THE STATE IN RELATION TO THE RIGHT TO A HEALTHY ENVIRONMENT

The need to preserve the environment to guarantee the needs and rights of future generations having been highlighted; we now turn to the scope of the legal obligations of the State in relation to the right to a healthy environment.

Given that the ECHR is directly integrated into the Norwegian legal order through the 1999 Human Rights Act and that its provisions consequently have the force of Norwegian law, this section draws in particular on the case law of the European Court of Human Rights as the authoritative basis for the interpretation of the ECHR.

3.1. POSITIVE OBLIGATIONS OF THE STATE IN MATTERS RELATED TO THE ENVIRONMENT, INCLUDING THE DUTY TO REGULATE EFFECTIVELY

Article 112 is in line with international best practice in providing that: “The authorities of the State shall take measures for the implementation of these principles”. As the UN Special Rapporteur on Human Rights and the Environment has noted: “States have obligations (a) to adopt and implement legal frameworks to protect against environmental harm that may infringe on enjoyment of human rights; and (b) to regulate private actors to protect against such environmental harm.”⁶⁸

⁶⁷ United Nations, General Assembly, *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, Mission to Timor-Leste*, A/HRC/20/25/Add.1, May 2012.

⁶⁸ See “Mapping Report”, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/25/53, 30 December 2013, para 44 *et seq.*, Substantive Obligations; See also, “Compilation of Good Practices”, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/28/61, 3 February 2015, Substantive Obligations paras. 72-78 John Knox (2014) – 46.

These positive obligations include the duty of the State under article 2.1 of the ECHR “not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.”⁶⁹ This extends to: “a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual”.⁷⁰

The Court confirmed this approach in cases directly related to the failure to regulate adequately the environmental impacts of activities. In *Öneryildiz v. Turkey*, the applicant submitted that Turkey had failed to meet its obligations to protect the right to life when thirty-nine people died in an accidental methane explosion and a landslide in a municipal rubbish tip in Istanbul.⁷¹ The Court reiterated that article 2 of the ECHR related to the right to life imposes upon States a positive obligation to take appropriate steps to safeguard the lives of those within their jurisdiction. In a similar case involving mudslides in Russia, the Court further found that the absence of proper land-planning and emergency relief policies in an area known as particularly vulnerable to mudslides constituted a failure by the State to uphold its obligation under article 2 to protect the lives of those in its jurisdiction.⁷²

From these cases, it may be inferred that a State violates its obligations to protect the right to life when it fails to take reasonable measures to protect those within its jurisdiction from a known hazardous situation when such measures are within the State’s authority and reasonable control.

The positive obligations of the State were also at the core of the *Guerra vs. Italy* case relating to article 8 of the ECHR that protects the right to respect for private and family life. The applicant submitted that the government had failed to regulate hazardous industrial activity and therefore had failed in its obligation to provide information on potential negative impacts to family life and physical integrity. The Court stated that, “although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life”.⁷³ The Court ruled that the

⁶⁹ *Case of L.C.B. v. the United Kingdom*, no. 23413/94, §36, ECHR 1998.

⁷⁰ *Case of Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §54; ECHR 2002.

⁷¹ *Case of Öneryildiz v. Turkey* [GC], no. 48939/99, §71, ECHR 2004.

⁷² *Case of Budayeva and Others v. Russia*, no. 15339/02, §128, ECHR 2008.

⁷³ *Case of Guerra and Others v. Italy* [GC], no. 14967/89, §58, ECHR 1998.

mere fact that Italy had not proactively “interfered” with the applicants’ private or family life” did not prevent its responsibility from being engaged.

The court has further clarified through several decisions the extent of the obligation for the State to take action in order to guarantee the protection of human rights in the context of environmental degradation. In *Öneryildiz*, the ECtHR stressed that this obligation “entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life”.⁷⁴ It further clarified that this duty included an obligation for the State to “govern the licensing, setting up, operation, security and supervision” of the dangerous and hazardous activities and to adopt or establish procedures to guarantee that this regulation is effective.⁷⁵

In another case involving noise pollution and its impacts on the right to privacy, the Court stressed that the Convention is intended to guarantee rights that are “practical and effective”, not “theoretical or illusory” and consequently ruled that the inability of the State to impose effective limits on the noise levels constituted a breach of the rights of the applicants.⁷⁶

The Lahore High Court Green Bench decision in a case directly related to the failure of the State to take sufficient action to prevent adverse impacts on human rights from climate change also highlighted the need for the State to take effective action. The Court determined in particular that “delay and lethargy of the State in implementing the [2012 National Climate Policy and] Framework offends the fundamental rights of the citizens which need to be safeguarded”.⁷⁷

3.2. RELEVANCE OF INTERNATIONAL ENVIRONMENTAL NORMS FOR THE DETERMINATION OF THRESHOLDS AND STANDARDS

Just as the existence of positive obligations under human rights law for States to prevent environmental damage is well established, so is the level of action that would be mandated under human rights norms. Human rights jurisprudence has highlighted that this level of mandatory action must be determined taking into account existing norms set through international environmental frameworks.

⁷⁴ *Case of Öneryildiz v. Turkey* [GC], *supra* note 71, §89, See also *Case of Budayeva and Others v. Russia*, Application no. 15339/02, §129, 132.

⁷⁵ *Case of Öneryildiz v. Turkey* [GC], *supra* note 71, §90.

⁷⁶ *Case of Moreno Gomez v. Spain*, no. 4143/02, §56, ECHR 2004.

⁷⁷ *Case of Asghar Leghari v. Federation of Pakistan*, (W.P. No. 25501/2015), §8, Labor High Court Green Bench, 25 September 2015.

In *Borysiewicz v. Poland*, the ECtHR indicated that applicable international environmental standards could be used to determine whether levels of noise reached a level that would imply a violation of the applicant's rights to private and family life and to home.⁷⁸ In the *Tătar v. Romania* case, the Court had to consider whether the operation of a mine had violated the rights protected by the ECHR. The Court ruled that the right of local residents to private and family life had been infringed as emissions of pollutants had exceeded accepted international norms.⁷⁹

In its decision on the *Urgenda* Case, the Hague District Court cited the provisions contained in the UNFCCC and subsequent decisions adopted by the parties to the Framework Convention in support of its determination that the actions of the State were insufficient and to order the State to implement more adequate emission reduction targets.⁸⁰ In particular, the court relied on the target to keep temperatures increase below 2°C contained in the 2010 Cancun Agreements to determine the level of warming considered as particularly dangerous that the Dutch State was under the legal duty to prevent, in cooperation with other States.⁸¹

In relation to climate change, the UNFCCC and subsequent decisions offer several references to the level of action that states must adopt in order to prevent the most severe impacts from climate change. The Convention provided that "The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve [...] stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system". The provision also provides a set of criteria to guide the determination of the level of emissions that would cause a dangerous interference, indicating that "[s]uch a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."⁸² In the 2010 Cancun Agreements, the Parties to the UNFCCC indicated that the objective of future mitigation efforts should be to "hold the increase in global average temperature below 2 °C above pre-industrial levels".⁸³ This objective was revised and strengthened in the Paris Climate Agreement adopted in

⁷⁸ *Case of Borysiewicz v. Poland*, no. 71146/01, §53, ECHR 2008.

⁷⁹ *Case of Tătar v. Romania*, no. 67021/01, §95, §120, ECHR 2009.

⁸⁰ *Urgenda*, *supra* note 37, § 2.35-2.52, 4.11-4.12.

⁸¹ *Id.* §4.65.

⁸² UNFCCC, article 2.

⁸³ UNFCCC, *Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, Addendum, Part Two: Action taken by the Conference of the Parties at its sixteenth session*, FCCC/CP/2010/7/Add.1, 15 March 2011, paragraph 4.

2015 through which States parties committed to “[h]olding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels”.⁸⁴

The Paris Agreement further establishes an objective for parties to “reach global peaking of greenhouse gas emissions as soon as possible” and “to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century”.⁸⁵ In line with these provisions, the Agreement further defines the objective to “mak[e] finance flows consistent with a pathway towards low greenhouse gas emissions”.⁸⁶

In his 2016 report to the Human Rights Council focused on climate change, the UN Special Rapporteur on Human Rights and the Environment highlighted that, based on their duty of international cooperation for the progressive realization of rights, States must ensure the full implementation of commitments made in relation to the Paris Agreement.⁸⁷

Consequently, it may be submitted that the existing human rights obligations of the Norwegian State, including that of international cooperation for the realization of rights, require that the State act in a manner consistent with the objectives set by international climate agreements, including the objective to pursue efforts to limit the increase of temperatures to 1.5°C.

3.3. OBLIGATION OF THE STATE WITH REGARDS TO PRIVATE BUSINESSES, INCLUDING STATE-OWNED COMPANIES

The obligations of States regarding the protection of human rights in the context of existing or proposed activities adversely impacting the environment also imply a duty to effectively regulate the activities of private actors.

The decisions of the ECtHR consistently and repeatedly emphasize this duty and elaborate on its implications for State conduct. In *Hatton and Others v. United Kingdom*, the Court ruled that noise pollution resulting from the activities of private operators in an airport could trigger the responsibility of the State to protect the right to privacy and family life of

⁸⁴ *Paris Agreement*, article 2.1.a

⁸⁵ *Paris Agreement*, article 4.1

⁸⁶ *Paris Agreement*, article 2.1.c

⁸⁷ UN, General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/31/52, December 2016, paragraph 88.

local residents.⁸⁸ The Court stated that “the State's responsibility in environmental cases may also arise from a failure to regulate private industry in a manner securing proper respect for the rights enshrined in Article 8 of the Convention”.

In *Öneryildiz*, the Court stressed that the obligation for the State to adopt positive measures aimed at preventing adverse impacts of environmentally damaging activities on the right to life “must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, and *a fortiori* in the case of industrial activities, which by their very nature are dangerous”.⁸⁹

In a case involving the adverse impacts on the right to privacy and family life, related to pollution emitted by privately owned tanneries, the Court ruled that while the State was “theoretically not directly responsible for the emissions in question”, “the town allowed the plant to be built on its land and the State subsidized the plant’s construction”.⁹⁰ The Court thus found that the responsibility of the public authority was engaged in this case as it had failed to protect the rights of the applicant.

This finding was confirmed in a case on air and noise pollution emitted by a privately-operated smelter in Russia and their alleged impacts on the right to privacy and to family life of the local residents. The Court again held that “the State's responsibility in environmental cases may arise from a failure to regulate private industry”.⁹¹ And it reaffirmed that the State could be held responsible for the impacts of this smelter as it had authorized the operation of the polluting plant and had subsequently failed to regulate its activities.⁹² The Court has repeated this finding in relation to several other cases involving chemical and noise pollution.⁹³

Courts in other regional jurisdictions have similarly interpreted international human rights obligations and/or constitutional provisions related to environmental rights to require the State to regulate the activities of private actors where failing to do so may result in violation or impairment of these rights.

⁸⁸ *Case of Hatton and Others v. The United Kingdom* [GC], no. [36022/97](#), §119, ECHR 2003.

⁸⁹ *Case of Öneryildiz v. Turkey* [GC], *supra* note 71, §71.

⁹⁰ *Case of Lopez Ostra v. Spain*, no. 16798/90, §52, ECHR 1994.

⁹¹ *Case of Fadeyeva v. Russia*, no. 55723/00, §89, ECHR 2005.

⁹² *Id.*, §132.

⁹³ *Case of Giacomelli v. Italy*, no. [59909/00](#), §78, ECHR 2007; *Case of Moreno Gomez v. Spain*, no. 4143/02, §55, ECHR 2004.

The Inter-American Court of Human Rights has repeatedly affirmed that States may be held responsible for human rights violations arising from the conduct of private actors. In *Velasquez Rodriguez*, which related to enforced disappearance, the Court stated that “an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”⁹⁴

In the context of environmental pollution, the Inter-American Commission for Human Rights declared admissible two cases in which Peru had failed to regulate a metallurgical complex and a field of toxic waste sludge generated by a mining operation.⁹⁵ While in both instances the environmental pollution resulted from the operations of private activities, the Commission found that the actions and omissions of the State in relation to these industries could constitute a breach of its obligations.

Similarly, in a case arising from adverse human rights impacts of fossil fuel extraction, the African Commission for Human and Peoples' Rights ruled that the duty of States to protect their citizens also requires that they protect them “not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties”.⁹⁶

In June 2011, the Human Rights Council endorsed by consensus the UN Guiding Principles on Business and Human Rights.⁹⁷ Through the adoption of the UN Guiding Principles, States made a joint commitment to address the adverse human rights implications of actors from the private sector. This adoption by consensus established an authoritative framework recognizing the duties of States and the responsibilities of business enterprises in addressing adverse business-related human rights impacts. The first pillar of the Guiding Principles clarifies the duty of the State to regulate the operations of private businesses adequately and the third pillar details States' (and businesses') obligations regarding the establishment of effective remedies.

Following the adoption of the Guiding Principles, the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises recommended that States develop and implement National Action Plans (NAP) in order to fully implement the

⁹⁴ *Velasquez Rodriguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), 172.

⁹⁵ *La Oroya Community v. Peru*, Petition 07/270, Inter-Am. Ct. H.R., Report No. 76/09 (2009); *Community of San Mateo de Huanchor and its Members v. Peru*, Petition 03.504, Inter-Am. Ct. H.R., Report No. 69/04,(2004).

⁹⁶ *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria (Ogoniland)*, 155/96 ACHPR30, paragraph 57.

⁹⁷ OHCHR, *Guiding Principles on Business and Human Rights*, A/HRC/17/31(Annex), 2011.

Guiding Principles.⁹⁸ In response, Norway adopted its NAP in 2015.⁹⁹ The Norwegian NAP sets forth an array of principles defining responsibilities of private businesses operating in Norway with regard to the human rights implications of their operations. The NAP explicitly addresses corporate responsibility in the context of climate change and the urgent need for climate action.. In particular the NAP provides that:

“Impacts on the climate and the environment resulting from the enterprise’s activities, for example through land use, exploitation of natural resources, greenhouse gas emissions or releases of hazardous substances, may also have adverse impacts on a broader range of human rights, such as minority and indigenous peoples’ rights or the right to life, health, food, water or adequate housing. If a company is responsible for such impacts, it is also responsible for addressing them.”¹⁰⁰

As a preliminary matter, Norway’s express recognition that business activities, through the medium of climate impacts, may have adverse impacts on the rights to life, health, food, water, and adequate housing and the rights of minorities and indigenous peoples is relevant to the Court’s evaluation of the State’s constitutional duties under Article 112 with respect to such activities.

In the present case, moreover, the responsibility of the Norwegian government with respect to such activities arises not only from its authority and responsibility to regulate but also from its direct participation in the activities through a State owned enterprise. Several of the petroleum production licenses awarded during the 23rd licensing round have been allocated to the energy company Statoil, in which the Norwegian government owns a majority share. Accordingly, in order to fully evaluate the government’s duties in these circumstances, we must also consider the additional responsibilities of the State in relation to the impacts of State-owned companies.

The UN Guiding Principles consider specifically this issue, highlighting that “States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State [...]”¹⁰¹The UN Working Group on Human Rights and Transnational Corporations further affirmed that the obligations of the State require “using

⁹⁸ United Nations, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, A/HRC/23/32, 14 March 2013, p. 21.

⁹⁹ Norwegian Ministry of Foreign Affairs, *Norway Business and Human Rights, National Action Plan for the Implementation of the UN Guiding Principles*, 2015.

¹⁰⁰ Norwegian Ministry of Foreign Affairs, *Norway Business and Human Rights, National Action Plan for the Implementation of the UN Guiding Principles*, paragraph 32, 2015.

¹⁰¹ *Guiding Principles on Business and Human Rights*, *supra* note 97, principle 4.

all the means at the disposal of States to ensure that the enterprises under their ownership or control fully respect human rights throughout their operations”.¹⁰²

The approach of the ECtHR is consistent with this principle. The Court has affirmed through several decisions that the responsibility of the State for human rights impacts resulting from actions by business actors could be more easily established when such actors are under the control of public authorities. In *Brândușe v. Romania*, the ECtHR found that control by the municipality of a company managing a landfill provided an additional legal ground to hold the authorities responsible for the human rights violations associated with the operation of the site.¹⁰³ In *Fadeyeva v. Russia*, the court mentioned State ownership or control over a company as elements contributing to the attribution of an alleged interference with human rights to the State.¹⁰⁴ Similarly, in *Dubetska and Others v. Ukraine*, the court repeatedly referred to State ownership of private companies to emphasize the responsibility of the State with regard to adverse impacts on the rights of local residents resulting from pollution generated by this industry.¹⁰⁵

3.4. DUTY TO PREVENT HARMS TO THE GLOBAL CLIMATE AND BEYOND THE STATE’S JURISDICTION

The positive obligations of the State to prevent, reduce and remedy environmental harm that interferes with the full enjoyment of human rights are not limited to harms occurring within its jurisdiction. As noted by the UN Special Rapporteur on Human Rights and the Environment, “there is no obvious reason why a State should not bear responsibility for actions that otherwise would violate its human rights obligations, merely because the harm was felt beyond its borders.”¹⁰⁶

Indeed, differentiating the obligations of the State to prevent environmental harms depending on the location of the harm would violate the prohibition of discrimination that is a core obligation in all human rights instruments. As the UN Human Rights Committee observed in *Delia Saldias de López v. Uruguay*, “it would be *unconscionable* to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate

¹⁰² OHCHR, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, A/HRC/32/45, June 2016, paragraph 94.

¹⁰³ *Case of Brândușe V. Romania*, no. 6586/03, §70, ECHR 2009.

¹⁰⁴ *Case of Fadeyeva v. Russia*, *supra* note 91, §89.

¹⁰⁵ *Case of Dubetska And Others V. Ukraine*, no. 30499/0, §109, §120, ECHR 2011.

¹⁰⁶ United Nations, General Assembly, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, John H. Knox, *Mapping report*, A/HRC/25/53, 30 December 2013, §63.

violations of the covenant on the territory of another State, which violations it could not perpetrate on its own territory."¹⁰⁷

This principle has been reaffirmed in a variety of contexts and instruments, and with respect to an array of human rights.

The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters also explicitly states that the rights protected under the Convention must apply "without discrimination as to citizenship, nationality or domicile".¹⁰⁸

The CESCR has explicitly confirmed that the obligations provided under the ICESCR also provide a duty for States "to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries"¹⁰⁹ and "prevent their own citizens and companies from violating the right to water of individuals and communities in other countries".¹¹⁰ The CESCR later confirmed this interpretation in relation to other rights protected under the Covenant, noting for instance that "to comply with their international obligations in relation to article 12, States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating that right in other countries, if they are able to influence these third parties by way of legal or political means."¹¹¹

The Committee on the Rights of the Child (CRC) also noted in 2016 the importance for States to consider the transboundary environmental impacts of their policies, expressing concerns regarding how air pollution in one State may affect "various rights of the child, both in the State party and in other countries".¹¹²

Other UN Special Rapporteurs have also confirmed each State's obligation to prevent human rights impacts beyond its jurisdiction. The Special Rapporteurs on the Right to Food and on Extreme Poverty and Human Rights have both endorsed the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural

¹⁰⁷ *Delia Saldias de Lopez v. Uruguay*, 29 July 1981, ICCPR Comm. No. 52/1979, at para. 12.3, referring to Art. 2 of the ICCPR. See also *Lilian Celiberti de Casariego v. Uruguay*, ICCPR Comm. No. 56/1979 (1981).

¹⁰⁸ *Aarhus Convention*, supra note 16, article 3.9.

¹⁰⁹ *CESCR General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, supra note 64, paragraph 31.

¹¹⁰ *Id.*, paragraph 33.

¹¹¹ Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, E/C.12/2000/4 (11 August 2000), p.51.

¹¹² CRC Concluding Observations (COs) on UK (2016) CRC/C/GBR/CO/5, paragraph 68.

Rights.¹¹³ The Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation also referred to the Maastricht Principles, stressing “the obligation of States to avoid causing harm extraterritorially” and affirming “the obligation of States to protect human rights extraterritorially, i.e., to take necessary measures to ensure that non-State actors do not nullify or impair the enjoyment of economic, social and cultural rights”.¹¹⁴

Most relevantly for purposes of the matter before the Court, human rights treaty bodies have consistently highlighted the obligation of States under applicable human rights treaties to mitigate climate change effectively, both in relation to their national emissions and to the extraction and exports of fossil fuels.

The CESCR, for example, recommended that Australia “reduce its greenhouse gas emissions and ...take all the necessary and adequate measures to mitigate the adverse consequences of climate change, impacting the right to food and the right to water for indigenous peoples.”¹¹⁵ In its subsequent review of Australia, the CESCR also specifically pointed at the climate impacts of fossil fuel extraction and exports in the country and “encouraged the State party to review its position in support of coal mines and coal export.”¹¹⁶

The preceding section of this Amicus Brief has sought to highlight the extensive and relevant jurisprudence of the ECtHR, of other human rights institutions and mandate holders, and of the growing array of relevant international norms that together define the key duties of States with regard to activities that might impact the environment in a manner resulting in adverse human rights implications. In the final section, we will consider more specifically the obligations of States with regard to the protection of the rights – present and future – of children in the context of policies impacting the environment.

4. RIGHTS OF CHILDREN & THE PROHIBITION OF DISCRIMINATION

We take for granted that the law should make special provisions to protect the rights of children. Such legal provisions give the clearest guide to protecting the rights of generations yet unborn since, if we fail to protect our children from environmental harm, we

¹¹³ ETO Consortium, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, January 2013.

¹¹⁴ United Nations, General Assembly, *Human right to safe drinking water and sanitation*, A/68/264, 5 August 2013, paragraph 46.

¹¹⁵ CESCR, Concluding Observations (COs), Australia. E/C.12/AUS/CO/5 (2017), paragraph 12 pp.37-38. (Concluding Observations available by date and country at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=5). See also CESCR, COs, Australia (6), 12; CESCR, COs, Russia (2017), 43; CRC, COs, Haiti (2016) 55.

¹¹⁶ CESCR, COs, Australia (6), 12; See also CESCR, LOI, Argentina, 2017, 3.

incrementally increase the risks to their children and future generations. Thus the UN Human Rights Commission has concluded that:

"A child rights-based approach requires States to take urgent action to mitigate climate change by limiting emissions of greenhouse gases in order to prevent to the greatest extent possible their negative human rights impacts on children and future generations."¹¹⁷

Given that children are particularly exposed and vulnerable to the impacts of environmental degradation but have limited opportunities to participate in decision-making, States owe heightened obligations to children in relation to environmental harm.¹¹⁸ A "greater level of protection and detailed procedures to consider their best interests is appropriate", in particular where decisions will have a "major impact" on children.¹¹⁹

These heightened obligations apply *a fortiori* in the context of climate change. The Human Rights Council has recognized in its 2017 resolution dedicated to human rights and climate change that "children [...] are among the groups most vulnerable to the adverse impacts of climate change, which may seriously affect their enjoyment of the highest attainable standard of physical and mental health, access to education, adequate food, adequate housing, safe drinking water and sanitation".¹²⁰ Indeed, the Intergovernmental Panel on Climate Change has identified age as a factor contributing to a "differential exposure and vulnerability of individuals or societies to climate and non-climate related hazards".¹²¹ The panel noted that children face higher risks than other age groups, including but not limited to situations in which children already face prevailing situations of disease and malnutrition, extreme precipitation and inland flooding.¹²²

The necessity to take children's rights into consideration in any policy affecting the climate is also emphasized in the context of the UN Climate Agreements. The Paris Climate

¹¹⁷ United Nations, General Assembly, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child, Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/35/13, 4 May 2017, paras. 33 et seq.

¹¹⁸ Committee on The Rights of The Child, *Report Of The 2016 Day Of General Discussion Children's Rights And The Environment*, 2016.

¹¹⁹ United Nations, Committee on the Rights of the Children, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, paragraph 1)*, CRC/C/GC/14 (29 May 2013), paras.19-20.

¹²⁰ UNGA, Human Rights Council Resolution 35/20, *Human rights and climate change*, 19 June 2017, paragraph 15.

¹²¹ Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability*, 2014, AR5, WG2, chap 19, 1066.

¹²² *Id.* at 1057 & 1070.

Agreement explicitly provides that States “should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, [... including] the rights of children”.¹²³

4.1. RIGHT OF CHILDREN TO PARTICIPATE IN DECISIONS RELATED TO THE CLIMATE

The Convention on the Rights of the Child enshrines the duty of each State to create an enabling environment where children can freely express their views and have them given due weight in accordance with her or his age and maturity.¹²⁴ The Committee on the Rights of the Child (CRC) has further elaborated on the scope of this obligation in the context of climate policies. The CRC has stated that States should “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”.¹²⁵ The Committee also expressed concerns when “insufficient measures are taken to enable children to have their voices heard and contribute to decisions made with regard to climate change”.¹²⁶

The CRC has defined key principles of a child rights-based approach, including the prohibition of discrimination and the duty to promote the child’s right to express his or her views.¹²⁷ The Office of the High Commissioner for Human Rights has further elaborated on these principles in the context of climate policies, insisting that “children’s participation in relevant decision-making processes, including those related to climate adaptation and mitigation policies, must be ensured”.¹²⁸

Under article 6 of the UNFCCC, States are directed to promote and facilitate public participation in addressing climate change and its effects and developing adequate responses, a commitment reaffirmed in article 12 of the Paris Agreement. Decisions

¹²³ *Paris Agreement*, preamble.

¹²⁴ United Nations, *Convention on the Rights of the Child*, 1577 U.N.T.S. 3 (1989), article 12.1, and article 12.2: "For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

¹²⁵ COs for Bhutan 2017, Antigua and Barbuda 2017, Mauritius 2015, New Zealand 2016, Samoa 2016, Saint Vincent and the Grenadines 2017.

¹²⁶ CRC, COs on Fiji, 2014.

¹²⁷ United Nations, Committee on the Rights of the Child, *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child*(arts. 4, 42 and 44, paras. 6), CRC/GC/2003/5 (November 2013), paragraph 12.

¹²⁸ OHCHR, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, *supra* note 117, paragraph 32.

adopted by the parties to the UNFCCC have emphasized the importance to place children at the core of the implementation of these provisions.¹²⁹

The protection of this right is particularly relevant in the context of administrative and legislative decisions adopted today that have long-term impacts for the environment and the climate because these impacts will be felt most acutely and most pervasively during the lifetimes of those who are currently below the age of effective civil engagement or who are not yet born.

4.2. OBLIGATION FOR THE STATE TO PROTECT THE RIGHTS OF CHILDREN FROM THE ADVERSE IMPACTS OF ACTIVITIES DEGRADING THE ENVIRONMENT

The impacts of climate change threaten many rights of children protected under international law, including the right to life, health (both physical and mental), housing, water, food, and culture.¹³⁰ The role of the positive obligations of the State in this context is therefore critical to guarantee the respect, protection and realization of the rights of children. The CRC has identified climate change as one of the biggest threats to children's health and has urged States parties to put children's health concerns at the center of their climate change adaptation and mitigation strategies.¹³¹

The CRC has stated that the Convention on the Rights of the Child requires States party to the Convention to "regulate and monitor the environmental impact of business activities that may compromise children's right to health, food security and access to safe drinking water and to sanitation," in putting children's health concerns at the center of their climate change adaptation and mitigation strategies.¹³² It further requires States to provide

¹²⁹ UNFCCC, Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012, Addendum, Part Two: Action taken by the Conference of the Parties at its eighteenth session, *Decision 15/CP.18, Doha work programme on Article 6 of the Convention*, FCCC/CP/2012/8/Add.2 28 February 2013 ;UNFCCC, Report of the Conference of the Parties on its thirteenth session, held in Bali from 3 to 15 December 2007, Addendum, Part Two: Action taken by the Conference of the Parties at its thirteenth session, *Decision 9/CP.13, Amended New Delhi work programme on Article 6 of the Convention*, FCCC/CP/2007/6/Add.1, 14 March 2008.

¹³⁰ OHCHR, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, *supra* note 117, at 3 ff.

¹³¹ United Nations, Committee on the Rights of the Child, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health*, *CRC/C/GC/15 (17 April 2013)*, paragraph 50.

¹³² *Id.*, para. 49 -50.

effective remedies in cases of violations of these rights by third parties, including business enterprises.¹³³

In its key principles of a child rights-based approach, the CRC also highlighted the need for States to consider the best interests of the child.¹³⁴ The Office of the High Commissioner for Human Rights has further elaborated on these principles in the context of climate policies, insisting that “as climate policies and programs are formulated, the main objective should be to fulfill human rights, taking into account the specific risks faced by children, their unique developmental needs, identification of their best interests and incorporation of their views, in accordance with their evolving capacities”.¹³⁵

The negative impacts on the rights of children that climate change is already having and will continue to have oblige each State, individually and collectively with others, to take action to protect all children from the actual and foreseeable adverse effects of climate change.¹³⁶ With regard to mitigation and energy policies, the Office of the High Commissioner for Human Rights further clarified the extent of the obligation on States, affirming that: “the protection of children’s rights requires stopping development of the most carbon-intensive fossil fuels and transitioning to clean, renewable sources of energy.”¹³⁷ It further stated that “fundamentally, a child rights-based approach requires ambitious mitigation measures to minimize the future negative impacts of climate change on children to the greatest extent possible by limiting warming to no more than 1.5°C above pre-industrial levels, as called for in the Paris Agreement”.¹³⁸

4.3. TRANSFER OF BURDEN TO YOUNGER AND FUTURE GENERATIONS

Continued support for the extraction of fossil fuels would result in higher emissions in the short term and therefore require more drastic policies to reduce emissions in the future. Licensing new exploration and extraction would consequently lead to the limitation of the policy options available in the future as well as, critically, a dramatic and almost wholesale transfer of economic and social burdens from the present to future generations.

¹³³ United Nations, Committee on the Rights of the Child, *General Comment No. 16*, CRC/C/GC/16, (17 April 2013), paragraphs 30-31.

¹³⁴ United Nations, Committee on the Rights of the Child, *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child*, *supra* note 127, paragraph 12.

¹³⁵ OHCHR, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, *supra* note 117, paragraph 32.

¹³⁶ See, for example, A/HRC/32/23 and A/HRC/31/52.

¹³⁷ OHCHR, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, *supra* note 117, paragraph 33.

¹³⁸ *Id.*, paragraph 54(a)

In the *Urgenda* case, the Dutch District Court of Den Haag considered specifically whether the State could postpone actions to reduce emissions of greenhouse gases and to compensate for such postponement by more ambitious policies in the future. The Court ruled that “it is the most efficient to mitigate and it is more cost-effective to take adequate action than to postpone measures in order to prevent hazardous climate change”. The court further affirmed that “the State has a duty of care to mitigate as quickly and as much as possible.”¹³⁹ The Dutch court rejected the government’s argument that decisions regarding the timing of mitigation policies fell exclusively within the discretion of the State. Relying on the principle of equity provided in the UNFCCC,¹⁴⁰ the Court found that “the State, in choosing measures, will also have to take account of the fact that the costs are to be distributed reasonably between the current and future generations. If according to the current insights it turns out to be cheaper on balance to act now, the State has a serious obligation, arising from due care, towards future generations to act accordingly”.¹⁴¹

Consequently, the legality of decisions regarding energy policies and extraction must be reviewed in light of the burden that they may transfer on to future generations with regards to the costs of climate mitigation policies and to the impacts of climate change.

5. CONCLUSION

In acknowledging the rights of both present and future generations to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained, Norway joined a growing consensus within the community of nations that recognizes the integral links between the environment and human rights and the affirmative duty of governments to protect those rights on an equal basis for those living and those yet to come.

The commitments undertaken within the Norwegian Constitution, are affirmed, reinforced and further elucidated in the obligations Norway has undertaken under international law to respect, protect and promote the human rights of this and future generations.

The international community has repeatedly recognized, through an array of mechanisms, that catastrophic climate change poses profound and immediate threats to those rights. The government of Norway has undertaken to consider and address those threats in all of its actions to address climate change.

¹³⁹ *Urgenda*, *supra* note 37, § 4.73.

¹⁴⁰ UNFCCC, article 3.

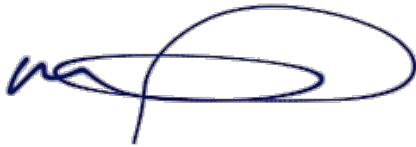
¹⁴¹ *Urgenda*, *supra* note 37, §4.76.

As the preceding analysis demonstrates, these obligations clearly extend to government conduct that contributes to oil and gas extraction, whether through the authorization of private conduct or through the government's own direct engagement in extractive activities. With respect to any such conduct, the resulting impacts on the environment, natural resources, and rights of both present and future generations must be fully and fairly considered on an equal basis. More fundamentally, that consideration must be reflected in the resulting government action itself. Failure to do so may unfairly shift the burdens of present conduct onto the shoulders of future generations, resulting in significant impairment of their rights and in substantial violations of the government's obligations under international human rights law.

CIEL respectfully submits that the perspectives and reflected wisdom of the international community on these matters can and should inform the Court's assessment of the government's duties under Article 112, and whether those duties have been fulfilled in the present case.

WHEREFORE, CIEL offers the foregoing *amicus curiae* brief for the consideration of the Court.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Carroll Muffett', with a large, stylized flourish.

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ANNEXES

ANNEX 1

NATIONAL CONSTITUTIONS WITH EXPLICIT REFERENCES TO INTERGENERATIONAL EQUITY

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

Morocco 2011, Article 35

Moldova (Republic of) 1994 (rev. 2006), Preamble

Mozambique 2004 (rev. 2007), Article 117(2.d)

Namibia 1990 (rev. 2010), Article 95(1)

Niger 2010, Article 35 and Article 149

Norway 1814 (rev. 2014), Article 112

Papua New Guinea 1975 (rev. 2014), Article 4(1)

Poland 1997 (rev. 2009), Article 74(1)

Portugal 1976 (rev. 2005), Article 66(2.d)

Qatar 2003, Article 33

Russian Federation 1993 (rev. 2014), Preamble

Seychelles 1993 (rev. 2011), Preamble

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

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

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

Sweden 1974 (rev. 2012), Article 2

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

Tajikistan 1994 (rev. 2003), Preamble

Timor-Leste 2002, Article 61(1)

Tunisia 2014, Preamble

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

Uzbekistan 1992 (rev. 2011), Preamble

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

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

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

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

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

ANNEX 2

INTERNATIONAL ENVIRONMENTAL AGREEMENTS WITH EXPLICIT REFERENCES TO INTERGENERATIONAL EQUITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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