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**THE IMPACT OF CLIMATE CHANGE ON THE RIGHTS OF THE CHILD:
CHALLENGE FOR REALIZING THE RIGHTS OF THE CHILD UNDER THE
CONVENTION ON THE RIGHTS OF THE CHILD**

BY

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**The Impact Of Climate Change On The Rights Of The Child:
Challenge For Realizing The Rights Of The Child Under The
Convention On The Rights Of The Child**

**A Thesis Submitted to the School of Law of Addis Ababa University, in Partial
Fulfillment of the Requirements for the Degree of Master of Law (LLM, Human
Rights Law)**

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December 2012

DECLARATION

I, **Marishet Mohammed Hamza**, declare that “**The Impact of Climate Change on the Rights of the Child: Challenge for Realizing the Rights of the Child under the Convention on the Rights of the Child**” is my own work, that it has not been submitted for any degree or examination in any other university or institution, and that all the sources I have used or quoted have been acknowledged accordingly.

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This thesis is dedicated to my uncle, Ato Tadesse Seyoume and his family; W/o Senayit Belachew, Mikiyas Tadesse, Kalkidan Tadesse and Yonatan Tadesse.

I owe it to you

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ACRONYMS

| | |
|--------|---|
| ACHPR | African Charter on Human and Peoples' Rights |
| ACRWC | African Charter on the Rights and Welfare of the Child |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CCCR | Committee on the Rights of the Child |
| CEDAW | Convention on the Elimination of Discrimination against Women |
| CERD | Convention on the Elimination of All Forms of Racial Discrimination |
| CESCR | Committee on Economic, Social and Cultural Rights |
| CMW | Convention on the Protection of the Rights of All Migrant Workers and Members of their Families |
| CRC | Convention on the Rights of the Child |
| CRPD | Convention on the Rights of Persons with Disabilities |
| DASR | Draft Article on State Responsibility |
| FAO | Food and Agricultural Organization |
| HRC | Human Rights Committee |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICJ | International Court of Justice |
| ILC | International Law Commission |
| IPCC | Intergovernmental Panel on Climate Change |
| MDG | Millennium Development Goals |

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| OHCHR | UN Office of High Commissioner for Human Rights |
| NGO | Non Governmental Organization |
| OPCP | Protocol to the Convention on the Rights of the Child on Communications Procedure |
| UDHR | Universal Declaration on Human Rights |
| UN | United Nations |
| UNEP | United Nations Environmental Programme |
| UNDP | United Nations Development Programme |
| UNFCCC | United Nations Frame Work Convention on Climate Change |
| UNICEF | United Nations Children's Fund |
| USA | United States of America |
| WHO | World Health Organization |

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Abstract

Because of the increasing adverse impacts of climate change on the environment and consequent negative effects on the enjoyment of virtually the whole range of human rights protected under different national, regional and international legal instruments. There is an increasing empirical evidence proving that climate change is not only about change in temperature, precipitation level, melting of the ice or rise in the sea level, but also up hold the enjoyment of human rights. But, as the level of human impact much depends on the adaption and resilience capacity of States, there is usually variation even among different groups in a certain State or internationally, owing to vulnerability factors such as, gender, age, dependence and others. Among others, due to their particularly sensitive physiological, metabolic and cognitive immaturity and reliance on adults, children are more prone to the adverse effects of climate change than adults. In spite of these, the international effort to put right the problem through a binding comprehensive accord, though indispensable, is too sluggish, often entangled and incomprehensive in terms of addressing human rights dimensions. It is, therefore, indispensable to explore and utilize human rights frameworks as a complementary approach.

Though the right to clean and healthy environment is not explicitly recognized under major international human rights instruments, including the Convention on the Rights of the Child, the already existing human rights normative standards can be reinterpreted to encompass the enjoyment of an environment of a particular quality so as to afford the full protection the rights protection aspire. This, human rights based approach, is a relatively sustained approach and widely pursued in the human right-climate change justificatory arguments. On the basis of this integrative approach, this study inquires into the direct and indirect adverse impacts of climate change on the rights of the child as set forth under the Convention on the Rights of the Child; focusing on the right to life, survival and development, the right to health, the right to adequate standard of living. It then moves on to explore the normative basis upon which States obligation to act to prevent damages caused by climate change hinges upon, norms applicable to establish States' responsibility and, finally, the role the Committee on the Rights of the Child can play in monitoring and enforcing States obligations vis-à-vis the impact of climate change on the rights of the child – based on its mandates as enunciated under the Convention on the Rights of the Child.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

In recent years the discourse at the international level concerning the regulation of climate change problem has turned out to encompass human rights based approach; rather than the previous trends to consider climate change solely as the concern for physical science.¹ The change is happening because of increasing evidence that climate change is not only about change in temperature, precipitation level, melting of the ice or rise in the sea level, but also hold up human rights.² Accordingly, the discourse has made a step forward and takes in climate change as the main challenge for human development and for the full enjoyment, and effective protection and promotion of human rights at the universal level.

Except may be the difference in terms of the burden and degree of blow, no State may escape the adverse effects of climate change. But, as does the ramifications will vary among States, there will also be variation in the level of impacts among different factions in a certain State or internationally. Usually, vulnerability due to factors such as, poverty, gender, age, status, disability and others which are in turn related to factors such as, resilience, sensitivity, resistance and adaptability contribute to the exposure to and suffer from severe conditions related with

¹ Particularly, the 2009 Human Rights Council's report on the relationships between climate change and human rights exemplifies the progressive broadening of the debate on climate change from specifically scientific, environmental and economic understanding of the causes and effects of climate change to the appreciation of the human rights dimensions. See UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between Climate Change and Human Rights (herein after OHCHR Climate Change Report), (2009), A/HRC/10/61, (<http://www.unhcr.org/refworld/docid/498811532.html>), last visited on February 19, 2012; International Council on Human Rights Policy, Climate Change and Human Rights: A Rough Guide, (2008), (<http://ssrn.com/abstract=1551201>), last visited on March 4, 2012, pp-3-6; and S. Humphreys, "Introduction: Human Rights and Climate Change", in S. Humphreys, (ed.), "Human Rights and Climate Change", (2009)

² The Intergovernmental Panel on Climate Change (IPCC) predicts with high confidence that, the trends in the global warming will increase the number of peoples' suffering from death, disease, hunger and malnutrition, injury from heat waves, floods, storms, fires, migration/displacement and droughts. M.L Parry, O.F Canziani, J.P Palutikof, P.J van der Linden and C.E Hanson, (ed.), Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (herein after IPCC), (2007), pp- 9-14; see also OHCHR Climate Change Report, Para.69; S. Humphreys, "Competing Claims: Human Rights and Climate Change", in S. Humphreys, (ed.), cited above, pp- 35-68; and International Council on Human Rights Policy, cited above

climate change.³ One of such categories are children. Due to their particularly sensitive physiological, metabolic and cognitive immaturity and reliance on adults, children are more prone to the adverse effects of climate change than adults.⁴ Children are more open to environmental challenges against their life, development, health, education, family care and treatment; and overall, to a decent living condition and well-being due to difficulties caused by the changing climate and the consequent disasters.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) report on the relationship between climate change and human rights, and The Intergovernmental Panel on Climate Change (IPCC) synthesis reports indicated that, “due to climate change related extreme events malnutrition and consequent disorders on child growth and development; existing child health risks, child mortality and morbidity; and undermined social and supportive structures (in some parts of the world) the vulnerability of children will further be exacerbated.”⁵ Specifically, studies has figured out that considerable share of child mortality are attributable (either directly or indirectly) to climate change.⁶ The fact that, malaria, diarrhoeal and other tropical water-borne diseases are highly sensitive to climate change further substantiates the cause to pick up climate change impacts on child rights.

Likewise, climate change impacts on nutrition and food security; displacements and migration; conflicts attributable to climate change; disruptions or disintegration of family and socio-cultural life; impacts on patterns of epidemics and diseases; impacts on physical infrastructure and institutions; and others create increasing stress on the rights of the child. Climate Change is also being taken as one of the challenges in realizing the Millennium Development Goals (MDGs) -

³OHCHR Climate Change Report, Para. 42; UNICEF, Children’s Vulnerability to Climate Change and Disaster Impacts in East Asia and the Pacific, (2011), (http://www.unicef.org/.../Climate_Change_Regional_Report_14), last visited on February 11, 2012, p.4; M. Pelling, “The Vulnerability of Cities to Disasters and Climate Change: A Conceptual Framework”, in H. Brauch, Ú. Spring, C. Mesjasz, *et al*, (ed.), Coping with Global Environmental Change, Disasters and Security: Threats, Challenges, Vulnerabilities and Risks, (2011), pp.549-548

⁴ UNICEF, A Brighter Tomorrow: Climate Change, Child Rights and Intergenerational Justice, () (<http://www.unicef.org.uk>), last visited on February 24, 2012, p.4; and UNICEF, Children’s Vulnerability to Climate Change and Disaster Impacts in East Asia and the Pacific, cited above

⁵ OHCHR Climate Change Report, Para. 48; and IPCC, cited above at note 2, p-393. The particular impacts of climate change on the different rights of the child in different contexts are explored in depth under Chapter Three.

⁶ World Health Organization (WHO), Global Health Risks: Mortality and Burden of Disease Attributable to Selected Major Risks, (2009), ([http:// www.who.int/.../healthinfo/global_burden_disease/GlobalHealt](http://www.who.int/.../healthinfo/global_burden_disease/GlobalHealt)), last visited on March 23, 2012. See also A. Üstün and C. Corvalán, Preventing Disease through Healthy Environments: Towards an Estimate of the Environmental Burden of Disease, (2006), (http://www.who.int/quantifying_ehimpacts/.../preventingdisease.pdf), last visited on March 23, 2012

this list down important objectives with respect to comprehensively realizing the rights of the child.⁷

In spite of these and other continued adverse effects of climate change, more specifically on children, actions to put right or mitigate the problems have so far been much concentrated on binding greenhouse gases emissions reduction resolutions and other adaptation and mitigation measures. Though it is evident that taking on such binding convention is instrumental in the struggle, it will be unreasonable or, at most, inaccurate to wait for solutions only through inter-State climate change negotiations and ensuing convention which is for so long proved to be difficult despite long negotiations, and also incomprehensive in terms of addressing human rights dimensions.

On top of this , when one considers the sluggish movement together with the recent trend of major green house gas emitting countries' (such as Canada, Russia, Australia and New Zealand) withdrawal from even the existing fragile obligations foreseen under the Kyoto Protocol⁸, it appears indispensable to explore and utilize feasible frameworks in other forums other than the environmental law. Among others⁹, the emphasis in this thesis is to look into the normative

⁷ UNICEF, Climate Change and Children: A Human Security Challenge, (Policy Review Paper, Innocenti Research Centre), (2008), (<http://www.unicef-irc.org/publications>), last visited on March 17, 2012, p.4; Save the Children, In the Face of Disaster: Children and Climate Change, (2008), (<http://www.savethechildren.org.uk>), p.1; and Global Humanitarian Forum, The Anatomy of Silent Crisis, (Human Impact Report), (2009), (<http://www.bb.undp.org/.../CC%20human%20impact%20report.pdf>), last visited on April 10, 2012

⁸ On 13 December 2011, the Environment Minister of Canada, Minister Peter Kent, has announced Canada's withdrawal from the Kyoto Protocol on the Ground that the Protocol imposes disproportionate burden on Canada. The Minister stated that, despite the burden on Canada, emissions would continue to rise as two of the world's largest polluters - the US and China - were not covered by the Kyoto agreement. Canada was under Category of countries that are required to greatly limit its emission level as per Annex B of the Kyoto Protocol and Annex 1 of the UNFCCC. See Summary and Analysis of COP17 – The UN Climate Change Conference at Durban, (<http://www.emergent-ventures.com>), last visited on February 09, 2012; and “Summary of the Durban Climate Change Conference (28 November-11 December 2011)”, Earth Negotiations Bulletin, (<http://www.iisd.ca/vol12/enb12534e.html>), last visited on January 13, 2012; and “Summary of the Doha Climate Change Conference: 26 November – 8 December 2012”, Earth Negotiations Bulletin, (2012), (<http://www.iisd.ca/climate/cop18/enb/>), last visited on December 12, 2012

⁹ In addition to the human rights based approach, there are suggestions to explore other possible international avenues where the plight of climate change can be challenged. Among these are: the use of the refugee legal regime to accommodate the issues of “climate change refugees” (this approach, of course, uses human rights law as the ultimate mechanism for recourse); resort to the evolving international dispute resolution systems such as, The International Court of Justice (ICJ), the World Trade Organizations' (WTO) panels and Appellate Body; utilizing the legal frameworks and adjudicatory system under the Law of the Sea Convention; persuading the UN Security Council to accommodate environmental menace to international peace and security, in particular one related to climate change; bringing climate change related claims before the accountability mechanisms of international financial institutions; and application of the Convention Concerning the Protection of the World Cultural and Natural Heritage. For detailed analysis on these systems see L. Andrew, “The Legal Option: Suing the United

frameworks under international human rights laws, particular under the Convention on the Rights of the Child (CRC), and explore how the standards and monitoring mechanisms thereof can be utilized to establish obligations of States vis-à-vis climate change impacts on children; see the way of doing compliance of States parties with their human rights obligation; and establish accountability for non-compliance.

Though the CRC do not explicitly mention the right of the child to be protected from climate change or even the right to clean and safe (healthy) environment, it sets out important standards which are meant to protect the rights of the child, which can be reinterpreted to include the effects of climate change.¹⁰ Among others, child's right to life; the right to enjoy the highest attainable standard of health; the right to highest standard of living adequate for physical, mental, spiritual, moral and social development; and the right to education in an appropriate environment responsive for the best interest of the child have implications on the obligations of State parties vis-à-vis climate change.

The recognition of these rights is not of course unique to the CRC; they are included virtually in all international and regional human rights instruments. Children equally benefit from all of the rights as any other individuals. However, there are additional human rights standards which are not widely broached in other international human rights instruments but guaranteed under the CRC and important to the child. These include: the child right to survival and development¹¹; the child right to grow up in a family environment¹²; the right to live in an environment free from the risks of environmental pollution, and where environmental hygiene and sanitation are

States in International Forums for Global Warming Emissions”, Environmental Law Reporter , (2003); F. Sindico, “Ex-Post and Ex-Ante [Legal] Approaches to Climate change Threats to the International Community”, New Zealand Journal of Environmental Law, (2005), pp.223-231; T. Koivurova, “International Legal Avenues to Address the Plight of Victims of Climate Change: Problems and Prospects”, Journal of Environmental Law and Litigation, vol.22, (2007), pp.283-285; W. Burns and M. Osofsky (ed.), “Adjudicating Climate Change: State, National, and International Approaches”, (2009), Part III; S. Bauer, “Stormy Weather: International Security in the Shadow of Climate Change”, in H. Günter, Ú. Oswald, *et al*, (ed.), cited above at note 3; and L.A.Malone and S. Pasternack, “Defending the Environment: Civil Society Strategies to Enforce International Environmental Law”, (2005)

¹⁰ The provision of the CRC directly related with environment is Article 24, Para.2 (c) requiring States Parties to ensure to the child the highest attainable standard of health by combating diseases and malnutrition, through “...the provision of adequate nutritious foods and clean drinking water, *taking in to consideration the dangers and risks of environmental pollution.*” (emphasis added); Article 24 of the Convention on the Rights of the Child, United Nations General Assembly Resolution 44/25 of November 1989 (herein after the CRC). See also UNICEF, “The State of the World Children 2011; Adolescence: An Age of Opportunity”, (2011), p-47

¹¹ Article 6 (2) of the CRC

¹² Id, Articles 20, 7 (1), 9(1) and (the preamble, at para.6)

maintained¹³; the right to enjoy and participate fully in cultural life (including for a child belonging to ethnic, religious or linguistic minorities and persons of indigenous origin)¹⁴; and the child right to engage in play and recreational activities.¹⁵ The fact that these rights of the child, which are fundamental for the full and proper physical, mental, spiritual and social development of the child, are particularly vulnerable to the adverse effects of climate change amounts to a compelling case for action.

In addition, given the particular vulnerability of children, the CRC provides special protection for the child; explicitly recognizing the child as the possessor of rights discrete from his families and other social groupings.¹⁶ The full autonomy in bearing the rights (as subjects of rights) enables the child or groups of children to participate and assert their rights in any proceedings and in all matters affecting their interest, including in the “development of standards, policies, programmes and measures in all relevant contexts of children’s lives.”¹⁷ Thus, as a vulnerable group disproportionately affected by the adverse consequences of climate change, careful consideration of the matter from the perspective of child rights may enhance the nature (i.e., it may generate immediate action) and quality of solutions to the climate change problem.

Normatively, the CRC incorporated both civil and political rights in one core international treaty. The incorporation of the full range of human rights in one document has related advantages: it enables to assess and address objective challenges facing children comprehensively; and creates the opportunity where children will use the standards and procedures on the whole in international or national systems. It does also have implications on the nature of legal obligations undertaken by States parties to the CRC; it engenders both obligations of conduct and result - as traditionally understood. The value of the CRC is further heightened because of its ratification

¹³ Id, Article 24 (2) (c) and (d)

¹⁴ Id, Articles 30 and 31 (2). As The Committee on the Convention on the Rights of the Child (herein after ‘the CCRC’) has noted in one of its general comments, the stated articles along with Article 17 (d) and 29 (1) (c) and (d) of the CRC make the convention the first core international human rights treaty to explicitly recognize indigenous children as rights holders. CCRC, General Comment No.11: Indigenous Children and their Rights under the Convention, CRC/C/GC/11, 12 February 2009, para.1

¹⁵ Id, Article 31 (1)

¹⁶ A. Glenn, “The Convention on the Rights of the Child: International Law Support for Children”, (1997), p.4

¹⁷ CCRC, General Comment No.12: The Right of the Child to be Heard, CRC/C/GC/12, 20 July 2009; and E. Brems, “Article 14: The Right to Freedom of Thought, Conscience and Religion” in A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (ed.), A Commentary on the United Nations Convention on the Rights of the Child, (2006)

virtually by all countries.¹⁸ As such, it defines standards and norms globally applicable in all States parties. The universality subjects the Convention's standards and monitoring processes to a universal appeal by children in any corner of the world whenever the rights protected under it are at issue.¹⁹

From practical functional point of view, the CRC's protection of children's lives, survival and proper physical, mental and social developments is essential not only for the reason that children are entitled to special care and assistance or to give children a better future, but also because it is indispensable element underpinning a more peaceful, prosperous, sustainable and just world the world's nation aspire.²⁰ As the first of future generations, it is today's children who will make the decisions and perform the services necessary in the future and lift the level of life for all human kind.²¹ Conversely, States parties to the CRC have to undertake all appropriate measures to give every child a better future. This implies that, as a regulative instrument, the CRC extends its reach to factors that harm generations today and will likely persist in to the future.²² These can be taken as additional merit of using the frameworks under CRC to the climate change discourse.

Regarding monitoring of States parties compliance with their obligations, the CRC established the Committee on the Rights of the Child (CCRC).²³ The treaty body is entrusted with the power to examine progress made by States parties in relation to their obligations through its competence to review periodic reports of States parties, general comments it may issue with the objective of clarifying the rights and obligations under the CRC and, though not yet entered in to force, as per the Third Optional Protocol to the Convention on the Rights of the Child on Communications

¹⁸ As of writing this study, all members States of the UN except South Sudan, Somalia and United States of America, are parties to the CRC. USA signed the treaty on 16 February 1995, though it has not yet ratified.

¹⁹ S. Goonesekere, "Introduction and Overview", in UNICEF, Protecting the World's Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems, (2007), pp.1-33

²⁰ UN General Assembly Resolution "United Nations Millennium Declaration", A/RES/55/2, 18 September 2000; and General Assembly Resolution, "The Future we Want", A/RES/66/288, 11 September 2012

²¹ A. Glenn, cited above at note 16, p.6

²² As Westra argued, "no people or nation can truly achieve a successful development or a better social and economic conditions ... unless each group member's rights are fully respected from the start ... As a result, any instrument designed for the protection of children should generate immediate action to factors which affect born children as well as to factors which may affect them long before they are born." L. Westra, "Environmental Justice and the Rights of Unborn and Future Generations: Law, Environmental Harm and the Right to Health", (2006), pp.3-11

²³ Article 43-45 of the CRC

Procedure (OPCP)²⁴ it has the competence to entertain complaints for violations of the rights under the CRC. This study analyses how these procedures can be utilized as valuable processes in the climate change discourse; both in terms of articulating human rights obligations of States parties concerning climate change, and as an impetus in the move towards development of effective and comprehensive international standards to manage the climate change problem.

1.2 Research Questions

The study is basically aimed at posing the question “how do the change in the global climate conditions, consequent adverse events and the ramifications thereof constitute challenge for the full and effective protection and promotion of the rights of the child guaranteed under the CRC?”

Under this umbrella question, the unit questions to be addressed are:

- How does climate change affect the human rights of the child?
- What are the obligations of States Parties under the CRC pertaining to the protection of children from the adverse effects of climate change?
- How can these obligations best utilized to promote mitigation and adaptation to the adverse consequences of climate change?
- What will be the role of the CCRC’s mandates and monitoring mechanisms to the discourse on climate change impacts on the rights of the child?

1.3 Scope of the Study

The research is based on the consideration of urgent and alarming adverse effects climate change has been causing to the environment which correspondingly challenge the enjoyment of the rights of the child as enunciated under the CRC. Accordingly, on the basis of the magnitude of the direct and indirect effects and conversely, the utmost significance for the general well being of the child, the rights of the child this study vigorously looks into are: the right to life, survival

²⁴ The final text of the OPCP providing the procedures for individual and inter-State communications, and an inquiry procedure approved and adopted by the Open-Ended Working Group to explore the possibility of elaborating an optional protocol to the CRC (established by the Human Rights Council pursuant to Resolution 11/1 of June 2009 and 13/3 of 24 March 2010) on 16 February 2011. On June 2011, the Human Rights Council by Resolution 17/18 and the UN General Assembly, by Resolution 66/138 of 19 December 2011 adopted the OPCP. It is opened for signature on 28 February 2012 and, in accordance with Article 19(1) of the OPCP, it will enter in to force three months after the deposit of the tenth instrument of ratification. As of writing this thesis, Gabon, Thailand and Germany are the only countries which have acceded or ratified the OPCP; whereas, 35 States have signed.

and development²⁵; the right to health²⁶; and the right to adequate standard of living. Also, to get more complete picture of the problem and look at the resultant obligations of States' parties comprehensively, the impacts on other rights of the child such as, the right to education, the right to develop as much as possible in a family environment; recreation and play, and cultural rights will briefly be highlighted.²⁷ The study will only focus on the human rights obligations of States parties to the CRC and the monitoring and compliance mechanisms thereof; thus, other possible international human rights based or other processes where the plight of climate change can be challenged will not be the concerns of the study.

1.4 Significance of the Study

While a lot has been written on the subject matter (i.e., the relationship between climate change and the rights of the child), they either focus on specific cases or describing the empirical evidences. Thus, as a comprehensive research, the study will have significant contribution in articulating and analysing the challenges climate change poses on the rights of the child, consequent human rights obligations of States and prospects under the CRC which can be used up to restrain the adverse effects climate change cause. It can also serve as pertinent input to the CCRC, scholars, legal practitioners and other stake holders who undertake child rights matters as part of their routines in dealing with the adverse effects of climate change.

1.5 Objectives

The main objectives at the center of this study are:

- Describing the major challenges climate change pose on the rights of the child and, explore and explain how these impacts up on the enforcement of child rights under the CRC;
- Investigating how human rights obligations of States under international human rights conventions and specifically, under the CRC can be used to deal the challenges climate change pose on the rights of the child; and

²⁵ Article 6 of CRC

²⁶ Id, Article 24

²⁷ Id, Articles 28 and 29; Articles 20, 7 (1), 9(1); and Articles 30 and 31

- Assessing the significance of the CRC's monitoring mechanisms in establishing responsibility of States parties concerning their acts and omissions which will contribute to climate change or exacerbate consequent upheavals.

1.6 Literature Review

Much has been written regarding the relationship between climate change and human rights generally. The literatures most often talk over the appropriateness of human rights based approach to climate change, the possible benefits of the approach, the challenges the approach will most likely face and assess the human rights implicated or could possibly be implicated by climate change - spanning internationally or in specific areas and/or country.²⁸ There are also plethora of international governmental and non-governmental organizations case studies and reports on the problem from the perspective of rights-based approach.²⁹

Regarding the brunt of climate change on child rights as well, a lot has been done in the form of either reports or case studies.³⁰ However, though these literatures have proved very useful in

²⁸ See for instance, International Council on Human Rights Policy, cited above at note 1; S. Humphreys, (ed.), cited above at note 1; A. Sinden, "An Emerging Human Rights to Security from Climate Change: The Case against Gas Flaring in Nigeria", in W. Burns and M. Osofsky (ed.), cited above at note 9; H. Knox, "Climate Change and Human Rights Law", Virginia Journal of International Law, (2009), Vol.50, Issue No.1; K. Anton and D. Shelton, "Problems in Environmental Protection and Human Rights: A Human Right to the Environment", ANU College of Law Research Paper No. 11-17, (2011); W. Pedersen, "Climate Change and Human Rights: Amicable or Arrested Development?", Journal of Human Rights and the Environment, Vol.1, No.2, (2010); D. Bodansky, "Climate Change and Human Rights: Unpacking the Issues", Georgia Journal of International and Comparative Law, Vol.38, No.3, (2010); L. McInerney, "Climate Change and Human Rights: An Introduction to Legal Issues", Harvard Environmental Law Review, Vol.33, (2009); D. Bell, "Does Anthropogenic Climate Change Violate Human Rights?", Critical Review of International Social and Political Philosophy, Vol. 14, No. 2, (2011); and M. Limon, "Human Rights Obligations and Accountability in the Face of Climate Change", Georgia Journal of International Law, Vol.38, (2010)

²⁹ See for example OHCHR, "Climate Change and the Human Rights to Water and Sanitation", (position paper prepared under the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation), (2010); ActionAid, A Climate for Change: Understanding Women's Vulnerability and Adaptive Capacity to Climate Change from ActionAid's Rights-Based Approach; Case Studies from Papua New Guinea and Solomon Islands, (2012) (<http://www.actionaid.org.au>), last visited on April 4, 2012; Global Humanitarian Forum, Deepening the Food Crisis? Climate Change, food Security and the Right to Food, (2009), (<http://www.germanwatch.org/de/download/2797.pdf>), last visited on April 9, 2012; and UNDP, Climate Change and Human Development in Africa: Assessing the Risks and Vulnerability of Climate Change in Kenya, Malawi and Ethiopia, (2007), (<http://www.hdr.undp.org/en/reports/global/hdr2007-8/papers/IGAD.pdf>), last visited on March 14, 2012

³⁰ Majority of the reports and case studies are undertaken by UNICEF and Save the Children. Among these are: UNICEF, "The State of the World's Children (Special Edition)", (2009); UNICEF, Climate Change and Children: A Human Security Challenge, cited above at note 7; UNICEF, Our Climate, our Children, our Responsibility: The Implication of Climate Change for the World's Children, (2008), (<http://www.unicef.org.uk/Latest/.../Our-climate-our-children>) last visited on March 21, 2012; UNICEF, Exploring the Impact of Climate Change on Children in South Africa, (2011), (<http://www.unicef.org/southafrica>), last visited on March 29, 2012; UNICEF, Children and

providing empirical data for this study, they do not talk over the subject in comprehensive manner; specifically the significant challenge it creates in terms of impeding the full realization of the human rights of the child and, plausible complementary approaches under human rights frameworks in general and/or under the CRC in particular.

1.7 Methodology

The research predominantly based on secondary sources available in books, journal articles, and reports made by governmental and non-governmental organizations, internet sources and other relevant materials. As the research does not produce primary data, it is exclusively library based.

1.8 Outline of the Study

The study is generally divided in to five chapters, including this introductory chapter. Chapter two presents a general overview of the basic environmental law approach on climate change and challenges obstructing progress. After that, the link between climate change and human rights, and challenges which are purported to test the ability of human rights based approach are dealt. This gives the foundation to understand the essence of the human rights based approach; bring in the setting upon which the subsequent chapters are built on; and establish the appropriateness of the human rights based approach to evaluate and look remedy for the effects of climate change on the rights of the child. Chapter three deal with the negative impacts of climate change on the different rights of the child. While chapter four focuses on the ways forward to deal with the challenges - based on the CRC and the compliance and monitoring mechanisms envisaged thereof, the final chapter (i.e., chapter five) is devoted to conclusion and recommendations.

Climate Change: Children's Vulnerability to Climate Change and Disaster Impacts in East Asia and the Pacific, cited above at note 3; Save the Children, Legacy of Disasters: The Impact of Climate Change on Children, (2009), (<http://www.savethechildren.org.uk/>), last visited on April 12, 2012; Save the Children, Feeling the Heat: Child Survival in a Changing Climate, (2009), (<http://www.resourcecentre.savethechildren.se/.../feeling-heat-child-survival-change>), last visited on April 16, 2012; and Save the Children, In the Face of Disaster: Children and Climate Change, cited above at note 7. See also S. Bartlett, Climate Change and Urban Children: Impacts and Implications for Adaptation in Low-and Middle-Income Countries, (2008), (<http://www.iied.org/pubs/display.php?o=10556IIED>), last visited on April 12, 2012; and E. Polack, Child Rights and Climate Change Adaptation: Voices from Kenyan and Cambodia, (2010), (<http://www.plan-uk.org/resources/documents/37227/>), last visited on March 26, 2012

CHAPTER TWO

THE LINK BETWEEN HUMAN RIGHTS AND CLIMATE CHANGE

2.1 Introduction

Climate change, as defined under the United Nations Frame Work Convention on Climate Change (UNFCCC), refers to “a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods”.³¹ Though natural climate variability is most often stated in the climate change discourse, as the IPCC asserted, the bulk of changes in physical and biological systems, are attributable to the activities of human beings - anthropogenic causes.³² Sadly, as the subsequent sections explore, the human activities have backfired against the human person - demonstrating a great threat to human life and security in every compartment of the earth system.³³ Scientific evidences further indicate that an increase in the global mean temperature beyond 2°C compared to the mean temperature in the pre-industrial period (1886-1946) would cause irreversible harm to ecosystems unless strong actions are taken to limit the global average temperature increment below the suggested degree.³⁴

As has been indicated in the previous chapter, the discourse on restraining climate change and its impacts used to approach it as ecological problem, and more recently emphasis is being paid to the analysis of the threat on economic situation (cost-benefit analysis) and the consequent challenges with little consideration given to the human rights concerns.³⁵ Along with this,

³¹ Article 1 (Paragraph 2) of the United Nations Frame Work Convention on Climate Change (herein after ‘The UNFCCC’), FCCC/INFORMAL/84, 1992; On the other hand, the IPCC defines climate change as “...any change in climate over time, whether due to natural variability or as a result of human activity.” Though there is difference between the two definitions in terms of emphasis on the source of climate change, just like the UNFCCC, the IPCC assessment subsequently concludes that changes in climate system are largely attributable to anthropogenic causes. IPCC, cited above at note 2, p.6-9

³² IPCC, cited above; see also N. Stern, “The Stern Review: The Economics of Climate Change”, (2005), pp.1-12

³³ H. Brauch, Ú. Spring, C. Mesjasz, J. Grin, P. Mbote, B. Chourou, P. Dunay, and J. Birkmann (ed.), cited above at note 3, p.23. See also Asfaw Kumssa and J.F. Jones, “Climate Change and Human Security in Africa”, International Journal of Sustainable Development and World Ecology, (2010), pp.453-461; Climate Change and International Security, (Paper from the High Representative and the European Commission to the European Council), (2008), (<http://www.>), last visited on March 5, 2012; and N. Adger, “Climate Change, Human Well-Being and Insecurity”, New Political Economy, (2010), Vol.15, No.2, pp.275-292

³⁴ N. Stern, Cited above at note 33; and Milestones on the Road to 2012: The Cancun Agreements, () (http://unfccc.int/essential_background/cancun_agreements/items/6132.php), last visited on March 24, 2012

³⁵ As Mrs. Navi Pillay (the UN Human Rights Commissioner) has remarked at the human rights council seminar held on February 2012, climate change do not only involve scientific, environmental and economic concerns, but also has immense human and social dimensions which are the concern for human rights law. See Opening Remarks

solutions were almost exclusively sought under the climate change law. Of course, some marginal references were made to human rights under the soft and binding environmental treaties. For instance, the 1972 Stockholm Declaration on the Human Environment recognizes “the fundamental rights of human being to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being and imposes obligation over States parties to assume responsibility to protect and preserve the environment for the current and future generations”.³⁶ Similar considerations were also made under the recent Malé Declaration on the Human Dimension of Global Climate Change.³⁷ However, these considerations are far beyond enough. Therefore, this chapter briefly pin point the sluggish environmental law approach; the essence and implications of human rights based approach; and the added value of human rights perspective in regulating the impacts of climate change on human rights.

2.2 Climate Change and Environmental Law

Though there were earlier evidences of international concerns on specific environmental matters³⁸, the development of modern international environmental law traces its background essentially to the 1960s where there was growing concern about the situation of the human environment.³⁹ However, environmental law efforts to develop a worldwide acceptable strategy leading to sustainability of the global ecosystem from anthropogenic climate change began in the late 1980s and early 1990s - with the discovery of the stratospheric ‘ozone hole’ and the

by Ms. Navi Pillay at the Human Rights Council Seminar, “The Adverse Impacts of Climate Change on the Full Enjoyment of Human Rights”, 23-24 February 2012, (<http://www2.ohchr.org/english/issues/climatechange/index.htm>), last visited on September 10, 2012. See also C. Aminzadeh, “A Moral Imperative: The Human Rights Implications of Climate Change”, Hastings International and Comparative Law Journal, (2007), p.231-265; and M. Mahmud and T. Afroz, “Human Rights Implications of Climate Change Induced Displacement”, Bond Law Review, (2009), Vol.21, Iss.3, pp.137-153

³⁶ Principle 1 of the Declaration of the United Nations Conference on the Human Environment, (Stockholm, 1972); similarly, the 1992 Rio Earth Summit somewhat figured the linkage between environmental sustainability and, human health and productive life. Principle 1 of the Rio Declaration on Environment and Development (1992)

³⁷ Malé Declaration on the Human Dimensions of Global Climate Change, (http://www.ciel.org/Publications/Male_Declarati_on_Nov07.pdf), last visited on March 22, 2012. For detailed analysis of the human rights implications of the Stockholm and Male Declarations, see S. Caney, “Climate Change, Human Rights and Moral Thresholds”, in S. Humphresys (ed.), cited above at note 1

³⁸ The classic examples are the Paris Convention for the Protection of Birds Useful to Agriculture of 19 March 1902 and the 1938 and 1941 decisions by the Trail Smelter Arbitration Tribunal on the case between USA and Canada.

³⁹ T. Hillier, Sourcebook on Public International Law, (1998), p-795

publication of the Brundtland Commission report, 'Our Common Future', which was heralded at the 1992 United Nations Conference on Environment and Development in Rio de Janeiro.⁴⁰

The conference adopted the UNFCCC where signatory States agreed to stabilize "greenhouse gases concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system...on the basis of the principle of common but differentiated responsibility and capabilities of the parties" the Convention is built up on.⁴¹ Accordingly, in addition to those obligations imposed over all parties⁴², developed countries and those countries in Annex 1 of the UNFCCC accepted responsibility for the great majority of emissions and "aim to stabilize" those emissions at 1990 levels by the year 2000.⁴³

However, it was latter felt that the objective set under the UNFCCC would not be met through the above general commitment unless a further firm, determinable (in a time frame), country specific and quantified emission limitation and reduction commitments are imposed.⁴⁴ Consequently, in 1997 the Kyoto Protocol is adopted. The Protocol imposes on 38 industrial countries (Annex 1 countries under the UNFCCC) the obligation to reduce their greenhouse gases emissions by an average of 5% below 1990 level for the period of 2008-2012.⁴⁵ Nevertheless, though States Parties to the Protocol are required to make demonstrable progress in achieving their commitments by 2005, the protocol itself entered in to force in 2005.⁴⁶

⁴⁰ Prior to the 1992 Rio de Janeiro Conference, there existed the 1972 Stockholm Conference and the Declaration adopted there. But, as Bodansky has expressed:

though the Stockholm Declaration has international environmental principles which are also incorporated in the latter adopted declaration and convention, the overall wave of movements which culminated in the adoption of the Stockholm Declaration had tended to focus on local, acute, and relatively reversible forms of pollution – for example, oil spills and dumping of hazardous wastes at sea – by regulation particular pollutants...[than] the more recent cycle of environmental activity concerned at long-term, irreversible, global threats, such as depletion of the stratospheric ozone layer, loss of biological diversity, and greenhouse warming.

D. Bondansky, "The History of the Global Climate Change Regime", in U. Luterbacher and F. Sprinz, (ed.), International Relations and Global Climate Change, (2001), p.23

⁴¹ Article 2 and 3 of the UNFCCC

⁴² Id., Article 4 (1)

⁴³ Id., Article 4 (2) (sub-paragraphs (a) and (b))

⁴⁴ Based on its mandate under Article 4(2) and 7 of the UNFCCC, the Conference of the Parties made up of signatories to the UNFCCC, in its first review of the Convention's commitments, which was held in 1995 confirmed the inadequacy and initiated a process to strengthen the commitments of Annex I Parties. N. Hohne, F. Yamin , and E. Haites, "The History and Status of the International Negotiations on a Future Climate Agreement", in C. Egenhofer, (ed.), Beyond Bale: Strategic Issues for the Post-2012 Climate Change Regime, (2008), p-20

⁴⁵ Article 3 (1) of the Kyoto Protocol to the United Nations Frame Work Convention on Climate Change, (herein after the Kyoto Protocol), (1997), (entered into force in Feb.16, 2005)

⁴⁶ N. Hohne, F. Yamin , and E. Haites, cited above at note 45, p.19

Like the UNFCCC, the Kyoto Protocol as well was not a complete and ultimate accord. While the major greenhouse gases emitting country, USA, is not party to the Protocol (making Annex I countries 37), even the quantified emission limit with respect to the member States is subject to flexibilities and, above all, the Protocol was subjected to expiry of its terms of application in 2012. Though the latest Doha mega conference (COP18) has extended the lifespan of the Kyoto Protocol up to 2020, the biggest greenhouse emitting countries once again manifested their disinterest in the format of a legally binding agreement. Though there is political success both in the Durban (2011 COP17) and the Doha conference in terms of agreeing a second commitment period (under the Kyoto Protocol) and setting political momentum for adopting an international climate change regime in 2015, there appears to be a loose political will to take decisive concrete actions which necessary shift the “business as usual” approach and lead to the goal of restricting global warming below 2°C.⁴⁷

However, according to different studies and the conclusions made by the IPCC, climate change has already been subjecting the human environment and life, including the enjoyment of human rights to irreversible damages and risks. With regard to the human rights implications, for instance, the OHCHR has projected that:

Global warming could result in hundreds of millions of people suffering from hunger, malnutrition, water shortages, floods, droughts, heat stress, diseases triggered by extreme weather events, loss of livelihood, and permanent displacement ... [and] indeed, climate change poses a direct threat to a wide range of universally recognized fundamental rights, such as the rights to life, food, adequate housing, health and water.⁴⁸

⁴⁷ In the 2011 Durban summit, while USA, which is not even part of the Kyoto Protocol, said it is not ready for a legally binding agreement unless a single binding agreement that would address both developed and developing country emissions is made, Canada, Japan, Australia and Russia stated their position of not wanting to commit to a second commitment period of Kyoto Protocol with a new round of emission reduction target unless the other major emitters (including the USA and China) accept legal commitments. Accordingly, as manifested in the Doha Conference, the latter countries including New Zealand refused to take on commitments under the second commitment period supposed to reckon on 2013. Coupled with China’s non-inclusion under the Second Commitment period, it means that the Protocol currently covers only about 15% of global greenhouse gas emissions. Thus, though some of these countries have given a nod to the extension of the Kyoto Protocol, despite its relevance to carry on the rule based system and value for subsequent negotiations, it is not expected that the process will bring tangible results soon. See “Kyoto Protocol Lifespan Extended”, Zimbabwe Broadcasting Corporation, Dec.13, 2011, (<http://www.zbc.co.zw/news-categories/blogs-a.../14569-cop17.html>); “Summary of the Durban Climate Change Conference”, (28 November-11 December 2011), cited above at note 8; and “Summary of the Doha Climate Change Conference: 26 November – 8 December 2012”, Earth Negotiations Bulletin, (2012), (<http://www.iisd.ca/climate/cop18/enb/>), last visited on December 12, 2012

⁴⁸ D. Bell, cited above at note 29, p.101

Empirical studies have already confirmed and are confirming the accuracy of the projection exploring the discernible impacts of climate change pose on human rights which require urgent action now.⁴⁹ Despite this however, comprehensive and universal international agreement has not so far been reached on global target of ‘greenhouse gases emission’⁵⁰ reduction. This in turn has vitalized the search for a complementary means of protecting human rights. Though the environmental law approach is a crucial solution which could not be denounce, given the sluggish and, sometimes, impasse at the environmental law climate change negotiations, it is equally wise to hunt for supplement. Accordingly, recent trends at the international level reveal that there is a growing move to involve human rights law in to the climate change discourse – ‘human rights based approach to climate change’. But, does human rights based approach make any sense? The following sections deal these issues.

2.3 Climate Change and Human Rights Law

Unlike environmental law approach which basically asserts inter-State accord as a primary tool to restrain climate change and its adverse effects (i.e., horizontal approach), human rights law is more often a vertical approach where individuals hold the sovereign responsible for its conduct

⁴⁹ See notes cited above at 28-30; See also Greenpeace International, Human Rights and the Climate Crisis: Acting Today to Prevent Tragedy Tomorrow, (___), ([http:// www.ohchr.org/.../ClimateChange/.../Greenpeace_HR_Climate](http://www.ohchr.org/.../ClimateChange/.../Greenpeace_HR_Climate)), last visited on August 12, 2012; E. Caisens and M. Padilla, “Climate Change and the Right to Food”, (A Comprehensive Study by Columbia Law School – Human Rights Institute), (2009), Vol.8; UNESCO, Education Sector Responses to Climate Change, (2012), (<http://www.unescobkk.org/resources/e-library/publication.pdf>), last visited on April 17, 2012; J. Williams, “The Impact of Climate Change on Indigenous people – the Implications for Cultural, Spiritual, Economic and Legal Rights of Indigenous People”, The International Journal of Human Rights, (2011), pp.1-41; and P. Hunt and R. Khosla, “Climate Change and the Right to the Highest Attainable Standard of Health”, in S. Humphreys (ed.), “Human Rights and Climate Change”, (2009), pp.238-256

⁵⁰ It has already been pointed out (at notes 32 and 33 above) that, anthropogenic activities are the major cause for global climate change. The term ‘anthropogenic’ is usually used in the context of emissions produced as the result of human activities and embrace a wide variety of human activities contributing to climate change such as, burning fossil fuels, deforestation, land use change, non-sustainable agricultural practices and others. These activities are the cause for the varieties of gases emitted to the earth’s atmosphere and which contribute to the greenhouse effect such as, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfurhexafluoride and others which are largely referred as ‘greenhouse’ gases. As the IPCC assessment and other studies indicate, the aggregate climate change is assessed essentially in regard to the increase in greenhouse gas concentrations. There is now an increasing scientific consensus that anthropogenic emissions of greenhouse gases has increased or sped up climate change and consequential brunt. That seems why the international responses to climate change as well has focused largely on stabilizing atmospheric concentrations of greenhouse gases by setting emission reduction targets, though other mitigation actions are not excluded. It is with this backdrop that ‘reduction of greenhouse gases’ is used all through this study as a basis to define States obligations to manage the changing climate problem and its impacts. See the Kyoto Protocol; IPCC, cited above at note 2; N. Stern, cited above at note 33, p.3-6; W. John, “Dictionary of Global Climate Change”, (1992), pp.12 and 112 (for the definitions of ‘anthropogenic’ and ‘greenhouse gases’); and R. North, “Climate Change over the Next Century”, in M. Griffin (ed.), Global Climate Change: the Science, Economics and Politics”, (2003), pp.45-66

which cause or have caused violations. Moreover, the enforcement of the latter is often dependent upon the existence of violation(s) and corresponding obligations over States. It is undoubtfull that a State primarily has the obligation to respect, protect and fulfill human rights. Conventionally, violation takes place when a State(s) fail to meet or decline their legal obligation. The uncertainty regarding climate change, however, is related to the question whether climate change and consequent adverse effects violate human rights. This section looks in to the interaction between climate change and human rights; and analyse the practical implications and challenges for the human rights based approach to climate change.

2.3.1 Does Climate Change Violate Human Rights?

In its 2009 report on the relationship between climate change and human rights, the OHCHR stated that:

[w]hile climate change has obvious implications for the enjoyment of human rights, it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense. Qualifying the effects of climate change as human rights violations poses a series of difficulties.⁵¹

The report alleges that, for certain difficulty factors which are not yet clearly determined or for lack of conclusive evidences, it will not be easy to conclude that climate change violates human rights.⁵² There are three restraining factors the report asserts as constituting challenge for firm conclusion: the issue of causation; the difficulty related to attributing a particular adverse effect on human rights to climate change; and the allegation that adverse effects of climate change are often projections about future impacts, whereas human rights violations are normally established after the harm has occurred.⁵³ Though the OHCHR has not elaborated on how these elements constitute a substantial ground for its conclusion, conversely, it has made relatively extensive

⁵¹ OHCHR Climate Change Report, para.70

⁵² Ibid; Besides the OHCHR, the UN Human Rights Council, which has mandated the former to undertake the study on the relationship between climate change and human rights (under Resolution 7/23 of March 2008), echoed in all its subsequent resolutions the OHCHR's conclusion. Yet, the Council did not explain on what the real legal consequence which can be drawn from the implications of climate change on human rights. In addition, pursuant to resolution 10/4 and 18/22, the Human Rights Council had mandated the OHCHR to convene a seminar on the adverse impacts of climate change on the full enjoyment of human rights. The panel discussion was undertaken on June 2009 and February 2012. However, the summary of the discussions do not indicate change on the position of the OHCHR. Human Rights Council Resolution 10/4, Human Rights and Climate Change, 10th session, March 2009; Human Rights Council Resolution 18/22, Human Rights and Climate Change, 18th session, October 2011; and OHCHR, Seminar on Addressing the Adverse Impacts of Climate Change on the Full Enjoyment of Human Rights, (2012), (http://www.ohchr/english/issue/climate_change), last visited on August 12, 2012. For detailed analysis on the Human Rights Council's Resolutions 7/23 and 10/4, see M. Limon, cited above at note 29

⁵³ OHCHR Climate Change Report, para.70

analysis of the crisis climate change brings up on specific rights such as, the right to life, the right to adequate food, the right to water, the right to health, the right to adequate house and the right to self determination; impacts on specific groups (for instance women, children, and indigenous peoples); climate change related displacements; and the impacts on international peace and stability.⁵⁴

Like Knox has pointed out, “based on its descriptions of many ways that climate change threatens the enjoyment of human rights, the OHCHR was expected to conclude that climate change threatens to *violate* human rights, and indeed that it already violates human rights...”⁵⁵ In contrast, the OHCHR stated that climate change only has implications for the enjoyment of human rights (i.e., it threatens the enjoyment of human rights).⁵⁶ It may mean that climate change does not violate human rights but increases the risk that human rights will be violated. But, the report does not make clear what substantial distinction, in the context of human rights, exist between saying that a certain conduct or activity do not violate human rights, but increases the risks of violation or has negative implications on the full enjoyment of human rights? The question, therefore, is ‘are human rights not violated when the interest of an individual which he/she is entitled by virtue of his/her humanity is subjected to risk or threatened because of anthropogenic causes?’

In support of the OHCHR’s position, Bodansky and Pedersen argued that, in essence climate change severely impacts the enjoyment of important human rights and as such it is sufficient for policy argument that climate change violates human rights; but, legally speaking, climate change no more violates human rights since there is no identifiable duty that some identifiable duty-holder has breached.⁵⁷ This essentially means that, human rights are entitlements to human beings by virtue of not only their victims but also the identity of their perpetrators.

⁵⁴ Id, para.20-64

⁵⁵ H. Knox, “Linking Human Rights and Climate Change at the United Nations”, Harvard Environmental Law Review, Vol.33, (2009), pp. 477-498 (emphasis original); and M. Limon, cited above at note 29, p.554

⁵⁶ OHCHR Climate Change Report, paras.70 and 71

⁵⁷ D. Bodansky, cited above at note 29, pp.518 and 519; and W. Pedersen, cited above at note 29, pp.12 and 13. In addition to identifying a particular duty-holder, Pedersen alleges that labeling climate change as a human rights violation is self-contradictory with some human rights standards as there are cases where the activities giving rise to climate change may be exceptionally allowed where “the action in question is provided for under national law, is necessary in a democratic society, may serve public health or national security purposes or where infringement is justified by reference to the need to protect the rights and freedoms of others.”

Let us first take the position of the OHCHR, i.e., whether or not ‘increasing the risk of violation of human rights’ constitutes violation. Among the well remembered ‘four freedoms’ of Franklin D. Roosevelt which he has proclaimed during the 1941 State of the Union address, “freedom from fear” is one. It is one of the foundations for human rights which are set to serve as guiding principles in the human rights discourse.⁵⁸ Though the freedom was initially translated to mean a worldwide reduction of armaments to such a point that no nation will be in a position to commit an act of physical aggression against any State - anywhere in the world⁵⁹, its essence is not limited to military aggressions.⁶⁰ Rather, it extends to the protection of human beings from insecurity which threatens their life and well being. It is more of general human security agenda than the conventional concept of military security. On the other hand, human security, as defined by the UNDP, refers to:

Safety from the constant threats of hunger, disease, crime and repression and protection from sudden and hurtful disruption to the patterns of our daily lives – whether in the home, in our jobs, in our communities or *in our environment*.⁶¹

With this backdrop, let us see the intersection between climate change and human security. According to the 2009 UN Secretary-General Report on the possible security implications of climate change, there are five channels through which climate change affect human security.⁶² Namely, *Vulnerability* – where climate change threatens food security and human health, and increases human exposure to extreme events; *slows down development* – this will exacerbate vulnerability and could undermine the capacity of states to maintain stability; *coping and security* – where coping responses of individuals and communities faced with climate change threats such as migration, competition over natural resources and others increase the risk of domestic conflict which will have international repercussions; *statelessness* – loss of statehood because of disappearance of territory; and *international conflict trends*.⁶³ These elements along

⁵⁸ T. Pogge, “Sever Poverty as a Human Rights Violation”, in T. Pogge, (eds.), Freedom from Poverty as a Human Right: Who Owes What to the Very Poor, (2007), p.1

⁵⁹ Ibid

⁶⁰ S. Muaddi, “The Universal Declaration of Human Rights”, (2010), p.23

⁶¹ UNDP, The Human Security Framework and National Human Development Reports, (2010), (http://www.hdr.undp.org/en/media/NHDR_Human_Security_GN.pdf), last visited on March 27, 2012, (emphasis added)

⁶² UN General Assembly, Climate Change and its Possible Security Implications, (2009), (Report of the Secretary-General, UN Doc. A/64/350)

⁶³ Ibid; see also H. Brauch and Ú. Spring, “Introduction: Coping with Global Environmental Change in the Anthropocene”, in H. Brauch, Ú. Spring, C. Mesjasz, J. Grin, P. Mbote, B. Chourou, P. Dunay, J. Birkmann (ed.), cited above at note 3, pp. 31-60

with the “very high confidence”⁶⁴ projections of the IPCC that climate change will increase the number of people suffering from death, disease, hunger and malnutrition, injury from heat waves, floods, storms fires, migration or displacement and drought,⁶⁵ leads to the conclusion that climate change and its adverse effects are human security threat. Therefore, it is against the rights to freedom from fear – which is a human rights violation.

Secondly, there is the argument of Bodansky and Pedersen based on the indeterminacy of the duty bearer – which the OHCHR characterized as the problem of attributing the effects of climate change to acts or omissions of specific State. Of course, as the jurisprudence on human rights based approach to climate change is at its early stage, it has not yet fully sorted out major contentions involved in it. One is the issue of who bears what obligation to whom. It is, however, flawed to conclude that until such time that the issues are addressed, climate change do not violate human rights. Though it involves difficulties, the problems can be overcome on the basis of the possible clues existing now.

For instance, as Knox pointed out, in order to assign responsibility, it is not an absolute necessity to link emissions of a particular State to a particular harm.⁶⁶ Rather, since precise allocation of responsibility would be difficult, it is possible to allocate responsibility on the basis of the scientifically proven percentage shares of States’ greenhouse gas emission, so that, even if all States contribute to climate change and are therefore joint violators of the human rights affected by it, greater liability accrues to those major emitters.⁶⁷ This could be one possible path.

Besides, States have the obligation to respect, protect and fulfill human rights. These obligations entail not only the duty not to violate human rights, but also a duty to establish institutions and mechanisms which effectively guarantee against violations and grant remedy in case violations

⁶⁴ According to the IPCC’s expert judgment and description of confidence level, “very high confidence” represents the probability that about nine out of ten chances of being correct. This is the maximum level of confidence the panel assigned in communicating uncertainties in its assessment. Next there is “high confidence” level which represents about eight chances out of ten. IPCC, cited above at note 2, p.4

⁶⁵ IPCC, cited above at note 2, pp.9-14

⁶⁶ H. Knox, cited above at note 56, p- 489

⁶⁷ Ibid; the same argument was forwarded by Philippines during the introduction of the OHCHR report, where it has objected the report’s conclusion that climate change related harm cannot be clearly attributed to acts or omissions of a specific State as erroneous. It had forwarded its position that “it is possible to apportion responsibility for climate change on the basis of both a contemporary and historical sense measured through carbon foot prints of States”. Similarly, Pakistan had argued that it is possible to determine responsibility for climate change on the basis of both historical responsibility and failure of a State to comply with international legal obligations (referring to the obligation prescribed under environmental laws); see: M. Limon, cited above at note 29, pp-543-592

occur. On this point, Bell argued that, “the existence of ‘predictable and remediable standard threat’ against a legally guaranteed interest imposes corresponding obligation to promote effective institutions that reduce or eliminate that threat”.⁶⁸ It has already been pointed that climate change is a threat to human security and as its causes are mainly anthropogenic, it is remediable. This in turn implicates an obligation, which will not necessarily be an obligation not to violate, but, at least, an obligation to set institutions and mechanisms as a guarantee for protection.

On top of this; it is also possible to transpose the substantive environmental law principles of ‘the polluter pays’ and the ‘common but differentiated responsibilities’ to the context of human rights law to determine the duty-holder. While the first principle dictates responsibility of a State for environmental harm owing to its acts or omissions, the latter consider the historic responsibility of industrialized countries for most environmental degradations.⁶⁹ The principles are set out to determine the party responsible for and allocate the burden/costs for making good environmental degradation and, the consequent prevention and control measures.⁷⁰ More importantly, the principle of common but differentiated responsibilities inform that, though all countries share the responsibility for protecting the environment, those capable and more responsible shall pay for the damage in proportion to the amount of their contribution.⁷¹ It is true that developed industrialized countries are the major contributors to the changing climate. Their approximate greenhouse gas emissions reduction limits and the ultimate targets are also set under the frameworks of UNFCCC. These elements cumulatively give clue as to on whose shoulder the

⁶⁸ D. Bell, cited above at note 29

⁶⁹ A. Kiss and D. Shelton, “Guide to International Environmental Law”, (2007), pp.95-108

⁷⁰ Ibid

⁷¹ Based on the polluter pays principle Caney further argued that, where it is not possible to pick out specific individual acts and the resulting burden; but where the polluters (as a class) are known, there is an indirect link between the acts of the group and the consequences of their acts which allows ascribing responsibility to some. Then, it would be possible to assess individual approximate responsibility based on the respective States’ greenhouse gas emission index and commitment level. In addition, Caney argue that, since climate change has the effect of transgressing “the minimum threshold below which no one is allowed to sink [taking the minimum conceptions of human rights such as, the right to life, the right to health and the rights to subsistence], anthropogenic climate change violates human rights. S. Caney, “Cosmopolitan Justice, Responsibility, and Global Climate Change”, Leiden Journal of International Law, (2005), PP.747-775; and S. Caney, cited above at note 38, pp.71-83

responsibility to mitigate climate change, supporting adaptation measures or accountability for ensuing damage (violation of human rights) should rest.⁷²

Finally, it is worth to mention that for human rights law to involve in the climate change discourse, it is not an absolute condition to establish that climate change *per se* violates human rights. Climate change is increasingly being identified as the major threat for the full enjoyment of human rights in various ways; these critical human rights impacts are then the concern for human rights law. The OHCHR has also recognized this. It has noted that, human rights standards and principles are applicable to the brunt climate change cause to human rights; providing important protection to the individuals whose rights are affected by climate change or response measures, and entailing an obligation over States to give the requisite attention to their response measure related to the effect of climate change.⁷³ This in effect means that human rights standards and principles are applicable to the brunt climate change cause to human rights entailing an obligation over States to give the requisite attention to response measure related to the effect of climate change so as to not impact upon human rights or transgress their corresponding duty.

2.3.2 Implications of Human Rights Based Approach to Climate Change

The foremost implication of human rights based approach to climate change is that, upon the recognition of climate change and its adverse consequences as human rights violation, it entitles those whose human rights are at stake a legal ground to claim for remedy through measures which effectively halt the adverse impacts and compensation for injury sustained.⁷⁴ This in effect

⁷² This was also the approach the Inuit's used to assert the obligation of USA to remedy violations of human rights they have sustained. The petition averred that, as a result of the USA's conduct with respect to climate change, the environment is degraded to the point violating the Inuit's fundamental human rights. Among others, the petition alleged USA's by far large contribution to global warming (25 percent of global emissions, which is more than the contribution of any other nation) depicting the cumulative historical and current emissions of USA, and its contribution to the global temperature increase. Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, (2005), (<http://www.earthjustice.org/pdf>), last visited on September 1, 2012

⁷³ OHCHR Climate Change Report, para.71. Though this conclusion of the OHCHR appear contrary to its preceding assertion that climate change may not violate human rights, the assertion has significance from human rights point of view as it obliges States to ensure protection, though the State in question is not necessarily responsible for the cause. Limon expounded the conclusion of the OHCHR as indicating "States' national and international level human rights obligations pertaining to climate change irrespective of whether climate change represents a human rights violation". M. Limon, cited above at note 29, p.556-559; and H. Knox, cited above at note 56, pp.491-496

⁷⁴ As Aminzadeh rightly put forward,

means that, in the interest of respecting, protecting and promoting human rights, measures have to be taken to reduce greenhouse gas emissions based on the prescribed target. Affirmatively, this will encourage States to act quickly and efficiently to limit greenhouse gas emissions both abiding to the existing international environmental accords and developing further comprehensive mechanisms.

Secondly, notwithstanding the necessity to adopt internationally binding comprehensive accord, human rights law requires States to make good what has been damaged and protect individuals from imminent threats to the enjoyment of their rights.⁷⁵ Besides, so long as human rights are violated, human rights law is less concerned about the difference in the level of contribution to the damage by way of greenhouse gas emissions. Rather, it requires reparation and protection both from individual States and the international community at large taking in to account human rights law obligations of States and, may be, the relevant environmental law principles such as, ‘common but differentiated responsibilities based on respective capabilities’. Moreover, as human rights law is grounded in the principle of inherent dignity of human being, it implies that it is not always only the total numbers of those affected by climate change that matter; rather, human rights law requires making available remedy for individual person who is victim or vulnerable to the threats of violations.

Thirdly, human rights based approach requires States to assure that measures taken under international environmental law to mitigate or adapt to climate change do not encroach upon the

“Current international environmental law does not adequately protect human life and dignity from the threats associated with environmental degradation ... [thus, from the human rights based view point] victims of environmental harm can benefit from a human rights-based approach; because ‘international human rights law provides a basis for intervention when harm occurs while international environmental law generally does not.’”

Similarly, Caney asserted that, “[I]f... climate change violates human rights, then it follows that compensation is due to those whose rights have been violated... [unlike] the conventional approach to climate change [that] identifies only two kinds of responses to climate change: mitigation and adaptation.” The duty of compensation exists besides duties of mitigation and adaptation since there is potential that the measures taken would be inadequate, would have unintended negative consequences on human rights or human rights were not protected despite the measures. See C. Aminzadeh, cited above at note 36, pp.231-265; and S. Caney, cited above at note 38, p.87

⁷⁵ Such obligations of States are not necessarily limited to greenhouse gas emissions caused by the government itself; rather, includes responsibility to regulate the action of third parties, more particularly the activities of private parties within the jurisdiction of the State and contributing to the problem. This is just one of the core aspects under States’ obligation to protect human rights. In addition, such obligations are entrenched under the existing human rights laws which have limited to certain extent the autonomy of State sovereignty. See Testimony of M. Wagner, S. Watt-Cloutier and M. Ggoldberg before the Inter-American Commission on Human Rights, (http://www.ciel.org/Climate_Change/ICC_Petition_7Dec05.html), last visited on September 01, 2012; and C. Aminzadeh, cited above at note 36, p.258

full enjoyment of human rights. It is the OHCHR report which has for the first time emphatically noted on the human rights implications of response measures.⁷⁶ Accordingly, measures taken to mitigate or adapt to climate change and its impacts (including national climate change action plans) such as, agro-fuel production or the search for arable and large plot of land for agro-fuel production should not pose ‘secondary effects’ on human rights, particularly on the right to food and the rights of indigenous peoples to their traditional lands and culture.⁷⁷

Finally, human rights based approach has the effect of broadening the purpose and objective of regulating climate change. Unlike the environmental law regime’s emphasis on environmental science, concerns for the cost benefit analysis and dependence on horizontal inter-State concessions, human rights based approach introduce the objective of ‘protecting human rights’. Thus, notwithstanding the consideration of reasonable opportunity cost of reducing greenhouse gas emissions and importance of comprehensive and universal international environmental treaty, human rights based approach instill States human rights obligations irrespective of the fulfillment of the environmental law considerations. This may reformulate environmental law regime’s principal focus on collective decision making to law enforcement since it is likely that those affected will turn to the binding languages of human rights law.

2.3.3 Challenges for Human Rights Based Approach to Climate Change

In applying human rights law standards and enforcement procedures to climate change, there are challenges which are not yet decisively settled and which are too often invoked as a basis to downplay the relevance of human rights law for the discourse on climate change. It begins with the difficulty of establishing cause and effect relationship between identified climate change related harm and the acts or omissions of a particular country (i.e., the issue of causation). It is more about identifying the right duty-bearer. The other challenge is the claim that climate change

⁷⁶ OHCHR climate change report, paras.65-67

⁷⁷ The Report of the OHCHR has stated that “whereas agro-fuel production could bring positive benefits for climate change and for farmers in developing countries, [it has] also contributed to increasing the price of food commodities because of the competition between food and fuel on scarce arable land.” Similarly, the UN Special Rapporteur on the right to adequate housing noted that, though mitigation measures related to the development of alternative sources of energy, such as hydroelectric dams, may promote development and mitigate climate change, their impacts on the rights of people situated near projects need to be taken in to consideration. OHCHR climate change report, paras.65-68; and Report of the Special Rapporteur on Adequate Housing to the 64th session of the UN General Assembly on the Impact of Climate Change on the Fulfillment of the Right to Adequate Housing, A/64/255, pp.14-15. See also S. McInerney, “Climate Change and Human Rights: An Introduction to Legal Rights”, Harvard Environmental Law Review, (2009), Vol.33, pp.431-437

impacts are future projections, whereas human rights laws are essentially concerned about violations already due. These are uncertainties directly related with conceptualizing human rights based approach to climate change.⁷⁸ The subsequent sections briefly highlight on these challenges and assess the possible way out under human rights and environmental law systems.

2.3.3.1 Causation

Causation is one of the standing requirements at the national and international jurisprudence where claimants are required to demonstrate basic connection between the injury sustained and the conduct complained of.⁷⁹ Accordingly, the injury has to be fairly traceable to the challenged

⁷⁸ In addition to the two, there are also doubts related with a specific question of how to identify climate change as the main cause while there are other possible contributing factors. It is a question of how to draw connection between climate change, certain environmental hazard and its consequent effects, while there are several contributing factors. This issue is also raised as a challenge in the OHCHR's climate change report. However, studies, including the IPCC report, are concluding with high confidence that anthropogenic greenhouse gas emissions is the major cause behind observed change in the climate. The reports aver that, based on the consistency of observed and modeled changes; climate change had and has discernible influence on many physical and biological systems. Regarding the attribution complex, IPCC stated that:

Attribution of the observed warming to anthropogenic forcing is easier at larger scales because, averaging over larger regions reduces the natural variability more making it easier to distinguish between changes expected from different external forcings, or between external forcing and climate variability.

IPCC, cited above at note 2, pp.9-13. The other challenge is related with promoting human rights through achieving sustainable economic, social and cultural development while tackling climate change. More particularly, industrial, agricultural and other activities resulting in greenhouse gas emissions and consequent changes in the climate have a dynamic relationship with realizing socio-economic rights. States are also obliged to ensure the realization of the rights (at least progressively) by taking all appropriate measures at their disposal. It would, therefore, appear self-contradictory to define obligations of States parties to undertake socio-economic development while the activities undertaken or to be undertaken are likely to contribute to climate change problem. But, as articulated in the Rio+20 UN Conference on Sustainable Development, it is possible to ensure the promotion of economic and social development in an environmentally sustainable fashion. Under the framework of sustainable development, it is possible to integrate economic, social and environmental aspects and recognize their interlinkages, so as to achieve sustainable development, i.e., socio-economic development that is environmentally sustainable, suitable for the future of the planet and development that maintains the interest of present future generations. It is important to also mention that, though climate change ultimately arise due to activities related to development, conversely it has also adverse impact on socio-economic development of many countries (more particularly developing nations) as it has already been holding back and has the potential to derail development progress. Finally, extraterritorial application of human rights obligations and the efficacy of measures under human rights laws to bring compressive and effective result are often raised as a concern when conceptualizing human rights based approach to climate change. Since these are related with taking on human rights law as a solution, they are dealt under chapter four.

⁷⁹ For instance, the UN Human Rights Committee (HRC) in the case *Aslbesberg and 2,084 other Dutch citizens v. Netherlands*, has clarified that "for a person to claim to be a victim of a violation of a right, he must show either that an act or an omission of a State party has already adversely affected his or her enjoyment of such a right, or that such an effect is imminent, for example on the basis of existing law and/or administrative decision or practice." Generally, the fact on the ground has to demonstrate that the rights of the claimant is violated or is under imminent possibility of violation; HRC, *Aslbesberg and 2,084 other Dutch citizens v. Netherlands*, Communication No. 1440/2005, UN Doc. CCPR/C/87/D/1440/2005, (2006), para.6.3. Likewise, it appears that the Inter American Commission on Human Rights has declined to admit the claims of Inuit's petition against USA on the ground that, the case before it does not show how USA could be held liable for actions also conducted in numerous other States. Though the petitioners alleged the joint and separate responsibility of each State, they have claimed that "being a

conduct of the defendant, and should not be the result of an independent action of some third party whose conduct is not complained of.⁸⁰ In the context of climate change, the requirement is meant to identify the party or parties which bear the responsibility for damage certain climate change effect has brought about. It is must to establish that the injury is sustained as a result of anthropogenic climate change and that the defendant has caused or played an indispensable role in it, or could reasonably have stopped it.

However, given the inherent nature of climate change – that it is caused by greenhouse gases released in any corner of the globe and that the effects are transboundary, it is apparently difficult for a victim to show that one particular country, corporation or other identifiable source has made exclusive contribution for the cause of the problem. There are, however, attempts to employ some domestic and international law principles to treat cases where the conducts of multiple States has caused harm to a particular people or individuals.

For instance, in the Inuit’s case, the petitioners having indicated that USA is the largest contributor to the global warming and that it has failed to cooperate with international efforts to reduce greenhouse gas emissions, they impliedly invoked the relevance of the domestic civil law principles of joint and several responsibility, and the international environmental law principles of “common but differentiated responsibilities, and the polluter pays principle” as a ground for responsibility.⁸¹ There are also suggestions for human rights bodies and other tribunals to make use of principles from domestic tort or civil rights litigation. For instance, the International Council on Human Rights stated that:

major polluter and Annex I country [under the Kyoto Protocol], USA bears a special responsibility”. Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, cited above at note 73, pp.103-110; Testimony of M. Wagner, S. Watt-Cloutier and M. Ggoldberg before the Inter-American Commission on Human Rights, cited above at note 76; and International Council on Human Rights Policy, cited above at note 1, p.42

⁸⁰ C. Mank, “Standing and Global Warming: Is Injury to all Injury to None?”, Journal of Environmental Law, vol.35, No.1 (2005), p.26

⁸¹ Though the Inuit’s do not directly mention the environmental law principles establishing responsibility, they have pointed to the UNFCCC and USA’s commitments there as a basis to their petition. They reiterate the largest contribution of USA to greenhouse gas emissions and ultimately to global warming but repeated failure to regulate and reduce its emissions. Thus, USA is obligated under international law to take responsibility for its contributions and pay reparations to those that it has harmed and continues to harm. On the other hand, the petition mention USA’s failure to cooperate with other nations or attempts to hinder coordinated action by other nations, whereas it should have taken the lead role as the top greenhouse gas emitter. This indicates their reliance on the principle of ‘the polluter should pay’ and ‘common but differentiated responsibility’. Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, cited above at note 73, pp.1-9 and 103-110; and Testimony of M. Wagner, S. Watt-Cloutier and M. Ggoldberg before the Inter-American Commission on Human Rights, cited above at note 76

it is common in environmental litigation, where there are numerous polluters, for a court to shift the burden of proof and hold the defendant liable unless he or she can mitigate responsibility by proving the proportional liability of other wrongdoers. Under theories of joint and several liabilities, each wrongdoer is held responsible for the entire harm in some circumstances.⁸²

There are also arguments calling for the need to interpret the causation requirement flexibly in consideration of the unique nature of climate change and its often foreseeable consequences. Accordingly, it is held that where there is harm or imminent threat and it is proven that the conducts of a State(s) are the cause, it is unreasonable to throw out a claim on the ground that there are also other contributors or the exact contribution of the defendant is not defined.⁸³ Either transposing the criminal or civil law approaches of determining joint and several liabilities or using the mechanism of shifting the burden to the defendant, it appear plausible to establish causation. This reasoning was slightly manifested in the USA Supreme Court's decision in the case *Massachusetts v. EPA*. The Court ruled that:

despite difficulties attached with standing (i.e., most harms from climate change lie in the future, the causes are diffuse, and a court's ruling will not, in any case, reverse climate change) 'special solicitude' is required in view of the unusual importance of the underlying issue (the foreseeable effects of climate change).⁸⁴

The Court then noted the harm Massachusetts had experienced due to rising sea level, the harm it is suffering now and the plausibility that such harms will increase due to the changing climate. The Court then moved on to concluded that, in view of the fact that the alleged activity (i.e.,

⁸² International Council on Human Rights Policy, cited above at note 1, p.43. Similarly, though he is pessimistic about its effectiveness before domestic tribunals owing to the concern of States over the implication of such litigations on domestic economy or, because of foreign sovereign immunity and other doctrines limiting liability, Posner argued that existing domestic legal standards and principles, international laws and customary international law could be pursued creatively, both before domestic courts and international tribunals. A. Posner, "Climate Change and International Human Rights Litigation: A Critical Appraisal", John M. Olin Program in Law and Economics Working Paper Series, (2007), pp.2-4

⁸³ Bell argued that:

Anthropogenic climate change is a new threat – or a new way of violating those basic human rights that can be violated in many different ways. [Since] rights have a 'dynamic character' [they are subjected to] changes in circumstances which are not [always] predictable... [Thus], the original formulation of the basic human rights could not plausibly have identified climate change-related duties. Therefore, anthropologic climate change is a new way of violating human rights, which gives rise to new duties [which may include duties without conventional causal relationship].

D. Bell, cite above at note 29, p.113; see also R. Verheyen, "Climate Change Damage and International Law: Prevention Duties and State Responsibility", (2005), p.362

⁸⁴ *Massachusetts v. Environmental Protection Agency*, 127 Supreme Court of the United States, (2007), p.17. See also L. Heinzerling, "Supreme Court Reviews: *Massachusetts v. EPA*", Journal of Environmental Law and Litigation, (2007), vol.22, pp.301-311; and A. Biering and S. Biering, "Massachusetts v. EPA: Rescuing Icarus with Environmental Federalism", Journal of Environmental Law and Litigation, vol.23, (2008), pp.35-72

emissions from motor-vehicles) make a meaningful contribution to greenhouse concentration and hence to global warming, the EPA's (Environmental Protection Agency) refusal to regulate motor-vehicle emissions under the Federal Clean Air Act contributes to Massachusetts' injuries – at a minimum, meeting the requirements for causation.⁸⁵

In addition, as pointed out previously, in the context of climate change, “it will not be an absolute requirement to link the emissions of a particular State to a particular harm in order to assign responsibility”.⁸⁶ Rather, since all greenhouse gases contribute to climate change, without consideration of the source of the emission, responsibility could be assigned on the basis of the relative emission levels of a State – which must consider both past and present emission levels.

Finally, it is worth to mention that the complexities in relation to causation do not extend to cases where a State has failed to take appropriate measures (within their scope) to prevent or reduce the damages caused by climate change within its jurisdiction. In such cases, notwithstanding the sources of the problem, States have human rights obligation to install precautionary and preventive measures within their purview to avoid human rights violations. Conversely, the obligation of State(s) to respect and protect human rights domestically further entail obligation over the State to restrain its activities contributing to Global climate change, simply in the interest of protecting human rights of individuals within its jurisdiction. States would, however, strongly argue that unilateral measures they take will not bring significant change to the climate problem as their mitigation will be offset by increasing emissions somewhere else. However, as the USA Supreme Court noted in the case stated above, such argument will not rule out the existence of causation. The Court held that:

[So long as the alleged emission] makes a meaningful contribution to greenhouse gas concentration and hence, to global warming; ... [if it] has already harmed and will continue to harm Massachusetts; that the harm is real; that the reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere; and that [the] risk would be reduced to some extent if petitioners received the relief they seek, the petitioners have standing to challenge the [act in question].⁸⁷

⁸⁵ *Massachusetts v. Environmental Protection Agency*, cited above, pp.17-23

⁸⁶ H. Knox, cited above at note 56, p. 489

⁸⁷ *Massachusetts v. Environmental Protection Agency*, cited above at note 84, pp.20-23

2.3.3.2 Uncertainties Related with Future Harm

The challenge in respect to the uncertainty of climate change related harm is the allegation that the harms will occur in the future affecting, may be, the interest and rights of future generations, not the generations today - essentially an issue of intergenerational harm. Of course, based on the recognition of two key factors – that human life emerged from and is dependent upon the earth’s natural resources and that human beings have a unique capacity to alter the environment upon which life depends, international environmental law recognizes ‘intergenerational equity’ as one of the core equity principles.⁸⁸ The principle basically expresses the notion that generations today have a special obligation as custodians or trustees of the planet to maintain its integrity to ensure the survival of the human species. Thus, to protect future generation from the plight of climate change and to maintain sustainable development, it is incumbent upon each generation to restrain its anti-environmental activities now.⁸⁹

However, climate change and its adverse effects are not challenge only for the generations to come. Current generation has already been facing the climate change problems and has the likelihood to face the uncertainty against their human rights in the future. Nevertheless, human rights law has not yet established a standard to regulate violations which are not yet occurred, unless there is evidence that the future harm is certain and imminent.⁹⁰ The questions, therefore,

⁸⁸ A. Kiss and D. Shelton, cited above at note 70, p.106

⁸⁹ As Westra put forward, the principle of intergenerational equity imposes duties on each generation to conserve the environment in as good a condition as it was when that generation first received it and to repair any damage caused by any failure of previous generations to do the same. These duties in turn bring about obligations, especially on affluent developed States (as most of the ecological ills proceed directly from their practices), to conserve environmental quality instituting remedial regimes to correct and restore presently harmful environmental conditions. Westra calls this link “intergenerational obligations with intergenerational duties.” L. Westra, cited above at note 22, pp.135-147

⁹⁰ The OHCHR report, having noted uncertainty with respect to future projections of adverse effects of global warming as a challenge for considering climate change as a violation of human rights, acknowledges, based on the reasoning of the Human Rights Committee, that where the effect on human rights is imminent, a person can claim to be a victim of a violation of a right. In the case *Bordes and Temeharo v. France*, the HRC has considered the author’s allegation that France’s decision to resume nuclear underground tests and, latter, the actual conduct of tests has increased the risks to their life – constituting as a violation of their right to life and privacy. The HRC decided the case inadmissible based on the remoteness of the harm, absence of conclusive evidence proving to the effect that France’s nuclear tests had violated or threatened to violate the alleged human rights and due to controversies attached with scientific certainty of the future occurrence of the harm. The HRC noted that “for a person to claim to be a victim of a violation of a right protected by the Covenant, he or she must show either that an act or omission of a State party has already adversely affected his or her enjoyment of such right, or that there is a real threat of such result.” For instance, in the cases *Mauritian Women v Mauritius*, *Kindler v Canada* and *Ng v Canada*, the HRC found violations of rights though there were no concrete violations alleged; indicating that potential breach is more than a theoretical possibility. see OHCHR climate change report, para.70 and foot note 104; HRC, *Bordes and*

are ‘what are the imminent threats climate change posed and has been posing to the full enjoyment of human rights? And, how does even the alleged future harm affect the interest of generations today (more particularly of children)?’

The first question is about the discernible impacts of climate change on human rights. As the impacts are the consequences of the effects of climate change on the natural environment, it is better to consider the assessments of the IPCC in this respect. In its fourth assessment report, IPCC has concluded with a high and very high confidence level that many natural systems are being affected by climate change and specifically disaggregated (by region) the projected human impacts.⁹¹ For instance, by 2020, between 75 million and 250 million people in Africa and between 120 million to 1.2 billion in Asia are expected to experience increased water stress due to climate change.⁹² These continents and the rest of the universe are also projected to face intense water security problems, high rate of flooding affecting low-lying coastal areas, depletion of agricultural production negatively affecting access to food, increases in malnutrition and consequent disorder, increased death, disease and injury due to projected climate change related exposures and others.⁹³

Beyond the projections, there are empirical studies further providing more specific information on the damaging and severe human rights impacts of climate change. For instance, the 2009 UN Human Rights Councils Special Rapporteur on adequate housing stated that:

Between 2000 and 2004, a yearly average of 326 climate-related disasters was reported, and some 262 million people were affected ... [b]y means of illustration: the 2005 hurricane season in the Atlantic was the most active on record, producing 27 named storms and killing over 1,600 people. ... [t]hat same year droughts swept across the Horn of Africa and Southern Africa. In the following year, many countries in those areas experienced extensive flooding. The 2007 monsoon season in South Asia caused intense floods and storms that killed more than 1,000 people in Bangladesh, India, Southern Nepal and Pakistan and displaced more than 14 million people in India and 7 million in Bangladesh.⁹⁴

Temeharo v. France, Communication No. 645/1995, para.5; HRC, *Ng v Canada*, Communication 469/1991, para.6; and HRC, *Kindler v Canada*, Communication 470/1991, para.6

⁹¹ IPCC, cited above at note 2, p.9

⁹² *Id.*, p.13

⁹³ *Id.*, p.8-12

⁹⁴ Report of the Special Rapporteur on Adequate Housing to the 64th session of the UN General Assembly on the Impact of Climate Change on the Fulfillment of the Right to Adequate Housing, cited above at note 78, pp.3-6

In addition to this, increasing reports and case studies inform the serious impacts of climate change on human rights, specifically on vulnerable groups.⁹⁵ The point is that, the instances demonstrate concrete cases evidencing the direct and concrete human impacts of climate change impacts.

The fact that some of the harms have not yet occurred or the existence of temporal distance between the acts and omissions today and the futurity of the injury may not be insurmountable challenge as it appears to be. Primarily, according to the IPCC projection, most of the stresses are anticipated to occur until 2020 (to the latest) or no later than 2050. If we take at least the base year (i.e., 2020), it is likely that by then majority of today's generation will still be alive. This clearly shows that, future harm does include the consideration of the rights of generations today. To rephrase what Westra has articulated, those who are alive today (more particularly, childrens) and who are most likely to face the brunt in the near future represent their generations to day as well as the generations to come.⁹⁶ They are "...the developing child of [current] population; and the first of future generations."⁹⁷

In consonance with this assertion, there was an incidence which has occurred in the 2010 United Nations consultation on climate change in Bonn. The delegates stuck on alleging climate change effects as future projections affecting future generations. In the mean time, a young woman has

⁹⁵ For instance, the 2009 Global Humanitarian Forum Human Impact Report (which is considered as the first comprehensive study into the human impact of climate change) documented detailed and scientifically verified impacts of climate change on human life, food, health, poverty, water, human displacement and security. According to the think-tank, every year climate change "leaves over 300,000 people dead, 325 million people seriously affected ... four billion people vulnerable, and 500 million people at extreme risk." Based on the statistics, the study projected civil unrest which could pose a threat to social and political stability. On the other hand, the OHCHR' report on the impact of climate change on indigenous people suggests, based on scientific evidences, that "livelihoods and cultural identities of the more than 370 million indigenous peoples of North America, Europe, Latin America, Africa, Asia and the Pacific are already under threat" due to climate change impacts. Besides, chapter three (of this study) presents specific and elaborated current and projected impacts of climate change on the rights of the child. See, Global Humanitarian Forum, "The Anatomy of A Silent Crisis", cited above at note 7, pp.9-18; OHCHR, Climate Change and Indigenous People, (2008), (<http://www.ohchr.org/EN/NEWSEVENTS/Pages/ClimateChangeIP.aspx>), last visited on February 2, 2012; and J. Williams, cited above at note 50

⁹⁶ L. Westra, cited above at note 22, p.4

⁹⁷ Id, p.147; Regarding the question 'whether future imminent harms which are most likely to affect the interest of current generations constitute violation of human rights', Bell has expressed the moral insignificance of future harm by using a scenario where "if a person set a time bomb at time t so that whosoever opens it will be grievously injured, the injury may occur at $t+5$, 10 or 15 years, and not necessarily at time t , but the act of the person violates the rights of all those who have exposure to the incidence even if the bomb have not yet blown up." See D. Bell, cited above at note 29, p.107

stunned the conference by asking the delegates the question “How old will they be in 2050?”⁹⁸ The message is that even though adverse effects of global warming are often projections about future impacts, the time is not that far-fetched – it is in the near or immediate future which definitely involves the interest of the generation’s now. Therefore, it is at the heart of human rights law to protect human beings from future imminent plights of violations of rights – notwithstanding its instrumentality to maintain justice where violations have already occurred.

2.4 Human Rights based Approach vis-a-vis Environmental Law

Though both environmental and human rights law are integral parts of international law, the analysis hitherto sketched the two regimes separately. This is essentially due to the readily perceived distinctions between the two regimes in terms of approach to the climate change problems; the level of applications of the legal frameworks; conditionalities attached with the application of the legal frameworks; and the relatively robust human rights protection system than the protection mechanism formulated under international environmental law.

In terms of approach to the climate change problem, environmental law is mainly structured in the science and on the economic cost-benefit analysis of greenhouse gas emissions. Consequently, how to respond to climate change is dependent on the potentially irreversible impacts of climate change on ecosystems and economy, which in turn is calculated on the basis of comparative advantage of the costs of action over the damage averted.⁹⁹ In contrast, human rights based approach is centered on humanity and the response measures are framed on the basis of the effects of climate change on the recognized human rights of individuals or vulnerable groups. As Bell has rightly observed, in the human rights based approach, what matters is not “opportunity costs of reducing greenhouse gas emissions over the economic costs of death, injury, malnutrition, water stress or illness... instead,... [i]f anthropogenic climate change threatens to violate [the] basic rights, each one of us has (at least) a duty to pay [our] share of the costs of preventing anthropogenic climate change”.¹⁰⁰

The apparent distinction in terms of approach is basically the manifestation of the difference between the two regimes underlying premise. Whereas human rights law emphasize on the

⁹⁸ UNICEF, “The State of the World’s Children 2011”, (2011), p. iii

⁹⁹N. Stern, cited above at note 33, p. iv

¹⁰⁰ D. Bell, cite at above note 29, p.100

effects of climate change on the enjoyment of basic rights and, to this effect, subject them to institutionalized mechanisms of protection (more often, vertical approach), environmental law lay emphasis on reciprocal obligations of States in relation with cutting emissions and, hence, govern inter-State relations (horizontal approach). The vertical application of human rights law together with the existence of manifold international human rights protection systems is supposed to be better responsive to the call out of individuals and groups threatened by the adverse effects of climate change.¹⁰¹ Institutionally, the environmental law regime has ‘conference of parties’ composed of governments and entrusted with the political function of directing the implementation and development of the regime; unlike expert committee’s established by human rights treaties to entertain and deliver more legalistic assessment of complaints.¹⁰²

Despite the conceptual and policy differences between the two approaches, they have points of complementarities. Like the environmental law, human rights law also creates legal obligations which are applicable to international action, including on the issue of climate change.¹⁰³ Therefore, from purposive point of view, the two regimes can reinforce each other. For instance, international agreements in the environmental law regime setting the limit on greenhouse gas emissions of States help in consolidating responsibility of States for human rights violations.

Likewise, concerning the obligation of developed States to assist developing States in adaptation and mitigation measures – including both financial support and technological transfer, the international human rights law obligation of international cooperation as stated under different

¹⁰¹ L. McInerney, cited above at note 29, pp.433-434

¹⁰² D. Bodansky, cited above at note 29, p. 516

¹⁰³ M. Limon, cited above at note 29, p.570. In his 2009 presentation in expert meeting on the future of human rights and environment, Limon asserted the complementarities between human rights law and environmental law (which he preferred to call “climate change agenda”) based on two grounds. The first reason is the 1972 Stockholm Declaration which states that: “Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights, the right to life itself”. The second reason is attached with the emphasis both approaches pay to equity; “while environmental law (i.e., climate change policy) emphasis equity between States, international human rights law has much to say on equity within a given State.” The first reason signifies the increasing role of human rights thinking and skill to the environmental discourse. Similarly, the second reason capitalize the significance of human rights law standards and principles in maintaining equity between States; without losing sight to the same role it plays in maintaining the rights of all (be it individuals or people). See M. Limon, “Benefits of linking the Human Rights and Environment Agenda: The Example of Human Rights and Climate Change”, (Presentation at the High Level Expert Meeting on the New Future of Human Rights and Environment), (2009), (<http://www.unep.org/environmentalgovernance/LinkClick.aspx?..>), last visited on August 2, 2012

international human rights covenants¹⁰⁴ has its added value. For instance, as the OHCHR report has drawn the complementarity between the UNFCCC principle of ‘common but differentiated responsibilities’ - where developed States have committed themselves to assist developing States in meeting the cost of adaptation, funding and transfer of technology – and the human rights framework of international assistance and cooperation – where States have to take steps to facilitate fulfillment of human rights in other countries depending on the availability of resources.¹⁰⁵ Both concepts propagate the human person as the central subject of development.

In addition, as it has been pointed out previously¹⁰⁶, human rights law has concerns over the mitigation and adaptation measures under environmental law which might have counter effect on the enjoyment of human rights. Human rights standards and thresholds may therefore play great role in solving the quandary in relation to the potential negative human rights consequences of response measure in environmental law discourse.¹⁰⁷ Generally, human rights law and environmental law (specifically, environmental protection law) are inextricably linked, have complementary objectives and mutual aspirations indispensable for human development and human rights.

2.5 Conclusion

Unlike any other challenges human beings have experienced, climate change now appears to be the most complex one to manage due to its diffused source of the cause, its utmost adverse effect on those who have least contributed to the problem and its extreme attachment to development factors of States - which developed States are hesitant to give up. Nevertheless, no nation may escape the climate crisis, its far-reaching consequences and, its impacts and implications for the enjoyment of human rights. Yet, the anticipated States parties’ conferences on climate change

¹⁰⁴ Articles 2 (para.1), 11 (para.2), 15 (para.4), 22 and 23 of the International covenant on Economic, Social and Cultural Rights (ICESCR), General Assembly Resolution 2200A (XXI) of 16 December 1966 ; Articles 4 and 24 (para.4) of the CRC; Article 32 of the Convention on the Rights of Persons with Disabilities (CRPD); Articles 3, 4 and 6 of the Declaration on the Right to Development

¹⁰⁵ OHCHR climate change report, para.87

¹⁰⁶ See note cited above at 77 and 78 above

¹⁰⁷ Reciprocally, environmental law as well has implications in relation to the attention human rights law has paid for environmental considerations. As Limon observes, climate change affects the environment human beings live in and, it is the changes in the latter that directly or indirectly affect the enjoyment of human rights. But, there is less attention paid to distinct environmental right. Therefore, environmental law underlies the significance of recognizing “environmental rights at the international level to properly protect and promote human rights – all of which are dependent on a safe and secure environment.” M. Limon, cited above at note 104

gave little fruit than they were originally projected and, as the UN Human Rights Council noted, there is a strong feeling now that the status quo so far in approaching the challenges of climate change is not effective.¹⁰⁸ This in turn has triggered the quest for complementary approach which is inclusive, comprehensive, concentrate on the human impacts of climate change; provide institutional legal frame work to assess the actual and potential implications of climate change on human rights; and provide frameworks for protection or redress for victims. International human rights law system is potentially well positioned to do these issues.

Human rights law is a fundamental tool in the context of climate change. Because, there are clear evidences proving that climate change is affecting the enjoyment of almost a whole range of human rights; and also due to the fact that human rights laws indiscriminately protect the interests of every human person on the ground of humanity alone, but with particular emphasis on vulnerable factions of the society. The hit of climate change on the vulnerable groups owing to factors such as gender, age, geography, poverty, indigenous or minority status, disability and others is pervasive.¹⁰⁹ One of such groups highly exposed to the strike of climate change effects are children. Climate change and its ramifications have the effect of worsening the enjoyment of basic human rights of children affecting their right to live in a social and international order in which their rights and freedoms can fully be realized. The next chapters examine the challenges climate change pose on the rights of the child and the ways forward under international human rights law in general and under the Convention on the Rights of the Child in particular.

¹⁰⁸ UN Human Rights Council, Seminar to Address the Adverse Impacts of Climate Change on the Full Enjoyment of Human Rights, (<http://www.ohchr.org>), last visited on September 22, 2012

¹⁰⁹ Ibid

CHAPTER THREE

THE IMPACTS OF CLIMATE CHANGE ON THE RIGHTS OF THE CHILD

3.1 Introduction

One of the major themes of international human rights law is creating habitable environment where individuals can freely enjoy their basic rights without unnecessary restrictions - directly or indirectly resulting from human activities. Among others, the UDHR, the grand human rights instrument often acclaimed as ‘a common standard of achievement for all peoples’, has guaranteed for everyone a social and international order in which rights and freedoms as set forth in the Declaration can be fully realized.¹¹⁰ The order is maintained when human rights are protected from different human security threats, including harms inflicted by climate change. As this formulation concerns everyone, promoting a protective environment for children is also one. Of course, creating conducive environment is the basis of the UN strategy for protecting the rights of children faced with extreme environmental threats posed by disasters, diseases, conflicts, war, migration, and other hardships.¹¹¹ This implies that children are potentially the major assertor of environmental rights given the inextricable dependence of the enjoyment of their basic rights on clean, decent and healthy environment.

Nevertheless, most of the major international human rights bills, including the CRC, are adopted prior to the concern for issues related with human rights and environment in general or climate change in particular was not an emboldened business of the time. Consequently, they do not distinctly set forth human right to clean and healthy environment, or protection against conditions that degrade environmental quality such as, climate change.¹¹² In contrast, some of the

¹¹⁰ Article 28 of the UDHR

¹¹¹ N. Boothby and A. Ager, “Promoting a Protective Environment for Children Affected by Disaster and War”, in G. James and S. Garry (ed.), *A Child’s Right to a Healthy Environment*, (2010), p.105

¹¹² Among the international human rights instruments, the CRC and International Covenant on Economic, Social and Cultural Rights (ICESCR) somewhat impose obligation over States parties to ensure ‘environmental hygiene and sanitation as a step to achieve the full realization of the right to health’; see Articles 24(2) (c) and Article 29 (1 e) of the CRC and Article 12 (2 b) of the ICESCR

regional human rights treaties¹¹³ and majority of national constitutions¹¹⁴ explicitly recognize the right to live in a clean and healthy environment.

However, the fact that the right to clean and healthy environment is not explicitly recognized under major international human rights instruments, including the CRC, is not an insurmountable deficit. As the mode human rights violations take place as well as the protection mechanisms are dynamic, so does the normative contents; hence, the existing standards and principles can be reinterpreted so as to afford the full protection they aspire. Of course, at the international level, there are two approaches as regards human rights based approach to environmental protection generally or specifically with respect to climate change. These are; recognizing a distinct right to have the environment protected and integrating environmental rights within the existing various categories of human rights.¹¹⁵

The first approach support the right to decent and healthy environment favorable to sustain life - as the African Charter on Human and Peoples' Rights (ACHPR) and the Additional Protocol to the Inter-American Convention on Human Rights provide. Yet, the scope of protection under these regional human rights documents transcends protecting the physical environment *per se*; rather, it is of at most significance for protection, interpretation and implementation of other rights.¹¹⁶ As Boyle observes, this approach generally creates an autonomous and justiciable right to an environmental of a particular quality¹¹⁷, and basically conceives anthropogenic

¹¹³ Article 24 of the African Charter on Human and Peoples' Rights (ACHPR), (Banjul, June 26,1991); and Article 11 of Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador", November 17, 1988, OAS T.S. Treaty Series No. 69

¹¹⁴ According to the 2012 Joint Report of the OHCHR and the United Nations Environmental Programme (UNEP), at least 130 national Constitutions or legislations set forth "the right to an environment of a specified quality, such as health, safe, secure, clean, or ecologically sound; including the corresponding State obligations to protect the environment." Human Rights and the Environment, (Rio+20: Joint Report of OHCHR and UNEP), (2012), (<http://www.linkedin.com/.../Human-Rights-Environment-Rio-20-46>), last visited on October 01, 2012, p.6

¹¹⁵ C. Aminzadeh, cited above at note 36; A. Boyle, Human Rights and the Environment: A Reassessment, (2010), (<http://www.unep.org/environmentalgovernance/LinkClick.aspx?>), last visited on October 13, 2012; K. Anton and D. Shelton, cited above at note 29; and A. Feldt, Climate Change, Human Rights, and Capabilities, (2011), (Western Political Science Association 2011 Annual Meeting Paper), (<http://www.ssrn.com/abstract=1766661>), last visited on April 14, 2012

¹¹⁶ For instance, in the *Ogoniland* case, the African Commission on Human and Peoples' Rights drew a close relationship between the individual's right to health and the peoples' right to a satisfactorily environment. Consequently, the Commission noted substantive obligations on the State with respect to the environment and the consequent impacts on physical and mental health. See The African Commission on Human and Peoples' Rights, *The Social and Economic Action Rights Center and the Center for Economic and Social Rights v Nigeria*, Communication No. 155/96, ACHPR/COMM/A044/1, 27th May 2002, paras.50-54

¹¹⁷ A. Boyle, cited above at note 115, pp.8-10

environmental degradations (including climate change) as violating general environmental human right.

The second approach espouses systemic rights based interpretation of the already set human rights provisions to construct an environmental right. There is, however, critic against this formulation, i.e., it does not consider environmental qualities and conditions as distinct from its value for the fulfillment of other human rights, and therefore falls short of representing what a specific right to a decent and healthy environment would provide.¹¹⁸ Nonetheless, the approach is widely pursued in the human rights-climate change justificatory arguments; may be for two reasons. First, a distinct environmental right is not explicitly provided for under major international human rights instruments and its content not articulated. Therefore, until the jurisprudence move on and recognize a distinct right to decent and healthy environment, it is implausible to rely on such right.

Secondly, there is a claim that the basic justificatory interests behind the right to clean and healthy environment are incorporated under the already established human rights – though not all components.¹¹⁹ Accordingly, there is now a sustained approach considering environmental degradation, more particularly the negative effects of climate change as constituting violation of one or more of existing human rights. For the same reasons, this chapter adopts an integrative approach and inquires in to the direct and indirect impacts of the adverse effects of climate change on the rights of the child set forth under the CRC.

Virtually the whole range of child rights protected under the CRC may be affected as a result of climate change. This chapter explores some of these rights, focusing on: the right to life, survival and development; the right to health; and the right to adequate standard of living. In addition, to get a more complete picture of the extent of the damage on children and examine the resultant obligations comprehensively, the impact on the remaining rights will be briefly highlighted. The

¹¹⁸ Id, pp.30-39; and A. Feldt, cited above at note 115

¹¹⁹ Feldt argued that the existence of a generic “environmental right” as well as other established human rights which are subject to climate change effects (violations) yield the practical benefit that come from linking climate change and human rights and, therefore, even though generic environmental human right is not independently recognized, it is possible to show that climate change infringes other rights. Similarly, it will be possible to defend a generic environmental human right and show that climate change infringes not only these rights, but also other basic rights as well. See A. Feldt, cited above at note 116, p.7

final section draws attention to the negative implications of the impacts of climate change on realizing the rights of the child and informs the necessity for action.

3.2 The Right to Life, Survival and Development

3.2.1 The Right to Life

Before moving on to the details averring climate change's intrusions on the child's right to life, it is worth to note the fundamental interests of the child protected under the right as recognized under the CRC.¹²⁰ The right to life is commonly interpreted as protection against different life threatening situations, such as arbitrary deprivation of life, war, acts of genocide, disappearance of individuals, acts of violence, etc.¹²¹ As these situations most often require States to refrain from intentionally and unlawfully depriving life, they are framed as negative obligations. Positively, States are also required to take measures with respect to eliminating or reducing infant mortality, increasing life expectancy, eliminating malnutrition and epidemics.¹²²

Conceptually, whether it entails negative or positive obligations, the right to life basically protects life; entitling every individual an affirmative or negative claim for measures to be taken to fully realize the right. Conversely, this entails obligations on States parties to take on and advance conditions which protect, to the maximum extent possible, the life of the child. It follows that, where human caused problem(s) or its effect encroaches upon the enjoyment of the right to life, it falls under the scope of protection foreseen under the right to life. There is obviously a strong link between preserving the environment and the (child) right to life, as the latter is dependent on the perfections in the constitution of the former. It follows that, one of the vital interests of the child which the right to life guarantees is protecting the natural environment. Thus, the negative effects of climate change on the environment that can have consequential direct and indirect impacts on the right are one of the concerns under the right to life.

¹²⁰ Article 6 of CRC

¹²¹ UN Human Rights Committee (HRC), General Comment No.6: Article 6 (Right to Life), HRI/GEN/1/Rev.9 (Vol. I), paras.1-3; and HRC, *Judge v. Canada*, Communication No. 829/1998 Views of 5 August 2002, para.10. Similarly, based on the CRC's Article 6, 37 and 38, the CCRC consistently referred (in a number of concluding observations) to the threats to the right to life of the child which armed conflict, disappearance of children, extrajudicial, summary or arbitrary executions and other life-threatening violence, such as torture and cruel, inhuman or degrading treatment or punishment; and violence to children by security forces, police, street violence and others pose. UNICEF, "Implementation Handbook for the Convention on the Rights of the Child", (3rd ed.), (2007), pp.83-93

¹²² HRC, General Comment No.6, cited above, para.5

To begin with the direct impacts, a study conducted over the extent of contribution of environmental factors to the disease burden of diseases asserted that 25% of deaths at the global level generally are attributable to factors related to environmental factors.¹²³ In children, however, environmental risk factors account for more than one-third of the disease burden.¹²⁴ More particularly, the 2009 World Health Organization Report on global health risks stated that 0.2% of total deaths were attributable to climate change and, of this figure; child deaths make up 85%.¹²⁵ The report indicated that the statistics are made on the basis of evidences that climate change is already responsible for 3% of diarrhoea, 3% of malaria and 3.8% of dengue fever deaths worldwide.¹²⁶ The report, however, did not accounted for some of the potential deadly effects of climate change – such as deaths resulting from more frequent and extreme storm and increased temperature hastened additional deaths – mainly because of difficulty to fully quantify and the uncertainty of the year life lost.¹²⁷

Nonetheless, there are evidences which suggest that, due to the highly sensitive nature of many of the main killers of children (malaria, diarrhoea and under-nutrition) to climate change, coupled with other factors, such as the physical, cognitive and physiological immaturity of children, climate change is expected to expose millions of children to a potentially high risk to their life.¹²⁸ As the IPCC projection indicate, in spite of the direct deadly effects of the increasing frequency of severe weather events (such as, tornadoes, hurricanes, storm surges and floods); climate change related exposures are likely to increase deaths as a result of diseases and injury resulting from heat waves, floods, storms, fires, droughts, diarrhoeal diseases, increased frequency of cardio-respiratory diseases due to higher concentration of ground-level ozone.¹²⁹

¹²³ A. Üstün and C. Corvalán , cited above at note 6

¹²⁴ Ibid; see as well S. Bartlett, cited above at note 31, p.15

¹²⁵ WHO, Global Health Risks: Mortality and Burden of Disease Attributable to Selected Major Risks, cited above at note 6, p.24

¹²⁶ Ibid; In addition to the WHO estimation, the 2009 Global Environmental Forum Climate Change's human impact report confirm the difficulty to assess with great precision the human impact of climate change since it results from a great interplay of factors, such as population growth, natural variability, land use and governance. Notwithstanding the constraints, however, based on the most reliable scientific data, the report projects that more than 300,000 people every year die due to climate change. On the other hand, according to the 2009 World Data Sheet, children constitute one third of the world population then. Using these, it can roughly be estimated that around 100,000 Children die each year from weather-related disasters and gradual environmental degradations due to climate change. Global Humanitarian Forum, cited above at note 30; and The 2009 world Population Data Sheet, (http://www.prb.org/pdf09/09wpds_eng.pdf), last visited on September 12, 2012

¹²⁷ Ibid

¹²⁸ UNICEF, Climate Change and Children: A Human Security Challenge, cited above at note 7, p.12

¹²⁹ IPCC, cited above at note 2, p.12

Though the problems are estimated to take place in any vulnerable sections of the society in any parts of the world; but, given the physical, physiological and cognitive immaturity of children which reduces their capacity to withstand difficulties, the death toll will be worse as regards children.

Moreover, evidences show that in the events of extreme climate change related disasters, the loss of life is shown to be disproportionately high among children. For instance, malaria and other tropical diseases which are highly sensitive to climate change exposed up to 50% of the world population to higher risks. According to the WHO, malaria causes 1 million deaths each year, and because they lack specific immunity, children experience high levels of both morbidity and mortality from malaria; 75% to 80% of malaria deaths occurring on children younger than 5 years old.¹³⁰ In continents such as Africa, up to 65% of resultant deaths occur among children under five.¹³¹ Similarly, diarrhoeal and other water-borne diseases claim the lives of 2 million children under the age of five years and among this, an estimated 4.3% (85,000) are due to climate change.¹³² Also, under nutrition as a result of food shortages consequential to reduced rainfall affecting agricultural production and injury due to extreme events which will likely expose to series and long term health effects affecting resistance capacity and others will most likely be exacerbated by climate change exposing child life to heightened risks.¹³³ UNICEF reckon under nutrition as underlying cause of at least 3.5 million deaths each year, and more than one third of deaths in children under five years of age.¹³⁴

Conflicts consequential to competition over natural resources also pose one of the biggest threats to the right to life of the child. Contributing to environmental degradation; affecting rainfall variability and water resources; causing loss of vital natural resources; increasing scarcity of

¹³⁰ S. Bartlett, cited above at note 31, p.3; and Save the Children, Feeling the Heat: Child Survival in a Changing Climate, cited above at note 31, p.4

¹³¹ According to the 2008 State of the African Child Report, malaria (18%) and diarrhoeal (17%) constitute one the major killers of children next to neonatal diseases (25%) and pneumonia(21%). Similarly, the 2012 Africa's Millennium Development Goal's (MDG) assessment report confirm that still malaria is the major cause of child mortality in Africa (excluding North Africa). UNICEF, "The State of Africa's Children", (2008), p.8; and MDG Report 2012, "Assessing Progress in Africa toward the Millennium Development Goals", (2012), p.57

¹³² Save the Children, cited above at note 18, p.3

¹³³ For instance, according to the latest African Millennium Development report, "in Africa (excluding North Africa), diarrhoea, malaria and pneumonia are responsible for more than half the deaths of children under five, and malnutrition is an underlying cause of a third of these." MDG Report 2012, "Assessing Progress in Africa toward the Millennium Development Goals", cited above at note 132

¹³⁴ UNICEF, Climate Change and Children: A Human Security Challenge, cited above at note 7, p.12

productive land and other conditions that undermine food and water security, climate change has the potential to disrupt the normal context in which people live - serving as a source of conflict.¹³⁵ It can also trigger large-scale social disruption in a vulnerable State as a result of climate change factored poverty, lack of access to economic opportunities, deteriorations in livelihood/well-being, impact on government capacity to provide basic services and for the host of other factors.¹³⁶ Likewise, displacement and migration of peoples due to flooding destroying agricultural land, agricultural production, basic infrastructure, personal properties, etc may lead to conflicts due to competition over scarce economic and natural resources. Besides, as the 2009 report of the UN Secretary-General indicated, “interacting with social, political and economic factors, which tend to be more direct and proximate drivers of armed conflict”, climate change may exacerbate conflict dynamics.¹³⁷

Nevertheless, owing to scarcity of empirical evidences it is difficult to pinpoint statistically what went before or the potential effects of climate change induced violent conflicts on the life of children. This does not, however, mean that there is no significant link between such conflicts and children. There are instances where violent conflicts arising partly from climate change related factors claimed the lives of hundreds of thousands. For instance, in 2007 the UN Secretary-General Ban Ki-Moon avowed that the Darfur conflict which is alleged to have claimed the lives of around 300,000 people between 2003 and 2005 has arisen partly from climate change.¹³⁸ The desertification and the consequential severe drought more frequent in the Sahel region on sub-Saharan Africa affected migration pattern of Darfur nomadic tribes who breed cattle and camels.¹³⁹ The droughts and general limitations in the rain patterns – which climatologists attribute to global warming – led to increasing clashes between nomadic and sedentary farmers, and served as kickoff whistle for the violent conflict amid the diverse social

¹³⁵ UN General Assembly, “Climate Change and Its Possible Security Implications”, cited above at note 63, para.11-21

¹³⁶ J. Barnett and W. Adger, “Climate Change, Human Security and Violent Conflict”, Journal of Political Geography, (2007), pp.639-655

¹³⁷ UN General Assembly, “Climate Change and Its Possible Security Implications”, cited above at note 63, para.67; UNICEF further estimated that, “in 46 countries – home to 2.7 billion people – climate change interacting with economic, social and political problems will compound an already high risk of violent conflict. [There are as well] 56 countries – home to 1.2 billion people – in which the outbreak of violence represents a distinct possibility in the long-term.”; UNICEF, Climate Change and Children: A Human Security Challenge, cited above at note 7, p.2

¹³⁸ UNICEF, Our Climate, Our Children, Our Responsibility: The Implications of Climate Change for the World Children, (www.crin.org/docs/climate-change.pdf), last visited on March 20, 2012, p.25

¹³⁹ “What has Happened in Darfur?”, Save the Darfur Social Network, (<http://www.savedarfur.org/pages/primer>), last visited on March 29, 2012

and political causes.¹⁴⁰ Consequently, when one consider the fact that half of those affected by the conflict are children¹⁴¹; due to the undermined food security resulted in acute malnutrition, lack of access to basic health services, violence within camps of displaced persons and, more particularly, the participation of child soldiers in armed forces and groups, it is not that much complicated to insinuate the effect of climate change induced violent conflicts on the life of the child.

3.2.2 The Right to Survival and Development

The child rights to survival and development as recognized under the CRC are the extension of the right to life.¹⁴² The legislative history of the CRC suggest that survival and development rights are partly inserted to give additional emphasis to the right to life; basically, in order to emphasis the obligations of States parties to promote measures and conditions for special care and safeguard of the child life.¹⁴³ Accordingly, the rights are often understood as imposing obligation over States parties “to create an environment which enables all children to grow in a healthy and protected manner, free from fear and want, to develop their personality, talents and mental and physical abilities to their fullest potential consistent with their evolving

¹⁴⁰ UNICEF, Our Climate, Our Children, Our Responsibility: The Implications of Climate Change for the World Children, cited above at note 139. In an Article posted in Washington Post, Ban Ki Moon stated that:

Two decades ago, the rains in southern Sudan began to fail. According to U.N. statistics, average precipitation has declined some 40 percent since the early 1980s. Scientists at first considered this to be an unfortunate quirk of nature. But subsequent investigation found that it coincided with a rise in temperatures of the Indian Ocean, disrupting seasonal monsoons. This suggests that the drying of sub-Saharan Africa derives, to some degree, from man-made global warming. Fighting broke out. By 2003, it evolved into the full-fledged tragedy we witness today, [because of the fact that], for the first time in memory, there was no longer enough food and water for all [in Darfur].

Ban Ki Moon, “A Climate Culprit in Darfur”, Washington Post, Saturday, June 16, 2007; Sudan scholars also agree that climate Change induced migration was among the many complex causes of the conflict in Darfur. It is often asserted that, climate change is a major contributing factor to the conflict as it caused a shift in rainfall patterns that has put nomadic herders and settled pastoralists into conflict with another. However, it is equally admitted that, the conflict will not be addressed by solving the climate change problem as the conflict involve complex political issues. But, as one report suggested, “it will be a vital component of securing a lasting political settlement.” See for instance, M. Mamdani, Saviors and Survivors: Darfur, Politics and the War on Terror, (2009); and A Report by the Mission and Public Affairs Council, Climate Change and Human Security: A Challenging Environment of Injustice, (2008), (http://www.csc.ceceurope.org/.../Climate_Change/CofEClimateSecurityGS), last visited on September 4, 2012. For detail analysis of climate change and armed conflicts in general, more particularly, the role of recurring droughts in fueling migration and subsequent conflict in Eastern African States, see, R. Lee, “Climate Change and Armed Conflict: Hot and Cold Wars”, (2009)

¹⁴¹ UNICEF, Darfur – An Overview, (2008),(http://www.unicef.org/infobycountry/sudan_darfuroverview.html), last visited on November, 2012

¹⁴² M. Nowak, “Article 6. The Right to Life, Survival and Development”, in A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (ed.), cited above at note 17, p.14

¹⁴³ OHCHR, “Legislative History of the Convention on the Rights of the Child”, (2007), Vol.I and II, pp.364-369; and A. Glenn, cited above at note 16, p.31

capacities.”¹⁴⁴ Along this line, the CCRC has stressed in a number of general comments that the right to survival and development can only be implemented in a holistic manner, through the enforcement of all the other provisions of the Convention.¹⁴⁵

The right to survival is mainly designed to shield children from preventable causes of death (physical survival) so as to prolong the life of the child¹⁴⁶ and to complement other specific rights of the child set under the CRC. The rights which needs to be enforced for realizing the right to survival (as well as for proper development) of the child includes: the right to the highest attainable standard of health; the right to adequate standard of living; the right to education; the right to preserve family relations and not to be separated from parents against their will (save the exceptions); the right to participation in the social and cultural life; and others which are important for livelihood.¹⁴⁷ Since the first three set of rights (i.e., the right to health, adequate standard of living and education) are separately treated in the forthcoming sections, the focus here is on the last two set of rights (i.e., on the impacts of climate change on family relationship¹⁴⁸ and, social and cultural life¹⁴⁹ of the child).

A clear consequences of climate change which affect the child right to family relations and crack down socio-cultural life are loss of parents, displacement and migration because of flooding, hurricanes, draught, outbreak of diseases, hunger and other extreme wether events. During or after the severe events or to spare subsequent violent conflicts and break out of epidemics or spreading of diseases, children will move with their parents or alone. Moreover, sudden events may result in separation from parents, relatives and/or caregivers and, destruction of the natural, social and cultural environment where children’s well being depends. The consequences are:

¹⁴⁴ M. Nowak, cited above at note 142, p.2

¹⁴⁵ CCRC, General Comment No.5, General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para.6), CRC/GC/2003/5 , 27 November 2003, para.12; CCRC, General Comment No.7, Implementing Child Rights in Early Childhood, CRC/C/GC/7/Rev.1 , 20 September 2006, para.10; and CCRC, General Comment No.11, cited above at note 14, paras.34-36

¹⁴⁶ This is the view reflected and accepted by the Working Group to the Commission on Human Rights which was mandated to prepare the CRC. It was stated that, “the right to survival carried with it ... the obligation to have positive steps taken to prolong the life of the child... [but], not in a very poor conditions...” OHCHR, “Legislative History of the Convention on the Rights of the Child”, cited above at note 143

¹⁴⁷ CCRC, General Comment No.7, cited above at note 145; and A. Glenn, cited above at note 16. In addition to the rights stated, the child right to be protected from all forms of violence (Article 19); from economic exploitation, child labour and hazardous activities (Article 32); drug abuse (Article 33); sexual exploitation and sexual abuse (Article 34); abduction, sale and trafficking (Article 35); and torture, degrading treatment and deprivation of liberty (Article 37) are all essential to comprehensively ensure the maximum survival and development of the child.

¹⁴⁸ Article 9 of the CRC

¹⁴⁹ Id, Article 31

breakdown of the social safety net maintaining the social well being of the child; reduced capacity of families; loss of home lands and properties (critical in the context of children from indigenous peoples’); and severe impact on availability and accessibility of fundamental life-saving and sustaining services indispensable for child survival. In all these situations, children are very likely to face abuse, neglect and exploitation; exposed to trafficking, gender based violence and physical harm; and other forms of violence and exploitation.

For instance, the 2010 devastating flooding in Pakistan, which climatologists¹⁵⁰, UN officials and Pakistan’s authorities has openly linked to climate change, hailed as the worst monsoon flooding in a century and, it has left 1,600 people dead and over 2000 persons injured.¹⁵¹ According to the CCRC, the Committee on the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Committee on the Convention on the Rights of Persons with Disabilities (CRPD) joint statement on floods in Pakistan, the number of people directly affected by the floods stands at 20.2 million, with over 1.9 million houses damaged or destroyed (leaving above 6 million in need of shelter) and, out of the general, 85% of persons displaced and damaged are

¹⁵⁰ Though most experts still caution any attempt to attribute any specific weather events to global warming in particular or, generally to climate change, Asrar (director of the World Climate Research Programme and World Meteorological Organization) and Van Ypersele (the vice-president of the IPCC), respectively asserted that the devastating flooding in Pakistan foreshadow extreme weather to come as a result of global warming. Asrar explained that,

IPCC assessment reports already noted that the higher ocean temperatures lead to more water vapor entering the atmosphere, ... which point towards a stronger than usual monsoon season in the store for South Asia. Normal air patterns would have dispersed these precipitation over as wide an area as possible. But an abnormal airflow caused by La Niña (lower temperature in the central Pacific Ocean) created a ridge of pressure that blocked the warm, saturated air from moving west to east normally. ... And, with nowhere else to go, Pakistan ... bore the brunt when the clouds became too saturated with moisture, opened up and precipitated all the excess water that was in the atmosphere ... [and] this created unprecedented amount of rain in short period of time.

N. Gronewold, Is the Flooding in Pakistan a Climate disaster?, (<http://www.scientificamerican.com/article.cfm?id=is-the-flooding>), last visited on September 07, 2012; L. Gray, “Pakistan Floods: Climate Change Experts say Global Warming Could be the Cause”, The Telegraph, 10 August 2010; A. Khan, Changing Climatic Patterns and Their Impacts: With Special Focus on Pakistan, (___), (<http://www.pecongress.org.pk/.../3>), last visited on October 12, 2012; N. UL Haq and M. Nawaz, “Pakistan’s Floods 2010”, (2010), (<http://www.wipripak.org/factfiles/ff126.pdf>), last visited on September 09, 2012, pp.57-59; and IPCC, cited above at note 2, Chapter 10 (on Global Climate Predictions)

¹⁵¹ B. Sharma, UN Links Pakistan Floods to Climate Change, (2010), (<http://www.aolnews.com/2010/08/20/un-links-pakistan-floods>), last visited on October 07, 2012; and N. Gronewold, “Pakistan – a Sad New Benchmark in Climate-Related Disaster”, The New York Times, August 18, 2010. In a resolution adopted unanimously by the UN General Assembly to strengthen emergency relief to Pakistan, the General Assembly noted that, “the massive scale of destruction and loss of life caused by unprecedented floods, triggered by torrential rains, in an otherwise arid region reflects *the adverse impact of climate change and the growing vulnerability of countries to climate change.*” (emphasis added); UN General Assembly Resolution 64/294, Strengthening Emergency Relief, Rehabilitation, Reconstruction and Prevention in the Wake of Devastating Floods in Pakistan, A/RES/64/294, 24 August 2010

women and children.¹⁵² An estimated 8.6 million children were reported to have been affected by the anomaly.¹⁵³ Consequently, people were sheltered in schools, emergency shelters, camps and other makeshift sites; thousands of displaced people (according to the government report, ethnic Sindhis) moved from their area to Karachi (culturally and politically dynamic area); over 450 health facilities in flood-affected areas have been damaged or destroyed – directly affecting access to health services; up to 150,000 people were subjected to food shortages for projected 12 months; severe crop, livestock, and grain stock losses – affecting the abilities of parents to feed themselves and their children; and others.¹⁵⁴ These conditions exemplify the challenges children met and have been meeting due to the changing climate worldwide, specifically in relation to survival in a proper family and social frameworks, and maintain cultural identity constructive to their cognitive and social growth.¹⁵⁵

Coming to the child right to development, the right is broadly interpreted by the CCRC as referring to the child’s right to physical, mental, spiritual, moral, psychological and social development - elements designated by the Committee as essential for achieving optimal development for all children.¹⁵⁶ In the context of climate change, however, the nature of the attributes of development makes it difficult to assess with any degree of precision the extent climate change place the right at stake. Like Bartlett articulated, the scale of the challenge will vary from one child to another based on children’s health, internal strength, age difference (capacity to manage stressful situations/resilience), levels of social support, household dynamics, ecological factors, the magnitude of stressful events, and others.¹⁵⁷

¹⁵² The CCRC, the Committee on CEDAW and the Committee on CRPD joint statement on floods in Pakistan, (<http://www.ohchr.org/english/bodies/crc>), last visited on August 07, 2012

¹⁵³ Oxfam Fact Sheet on Pakistan Floods, (2010), (<http://www.globalgiving.org/pfil/6348/projdoc.pdf>), last visited on September 07, 2012

¹⁵⁴ Congressional Research Service, Flooding in Pakistan: Overview and Issues for the Congress, (<http://www.fas.org/sgp/crs/row/R41424.pdf>), last access on September 07, 2012

¹⁵⁵ According to the 2011 report of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons (which quote a study undertaken by UN), it is estimated that up to 50 million people are internally displaced each year because of natural disasters. According to the 2010 statistics, for instance, 42.3 million people were displaced by ‘sudden-onset natural disasters; out of which 90% are attributable to climate change related factors. This very well informs the potential devastating impact of climate change on the child right to survive and develop in a family, social and cultural environment. See UN Special Rapporteur on the Human Rights of Internally Displaced Persons, “Protection of and assistance to internally displaced persons”, UN General Assembly, A/66/285, 9 August 2011, para.18

¹⁵⁶ CCRC, General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para.6), CRC/GC/2003/5, 27 November 2003

¹⁵⁷ S. Bartlett, cited above at note 31, pp. 35-40

Nevertheless, there still remains a potential high risk that in the aftermath of stressful events; displacement of the family and the potential for separation from parents; damage or loss of property; disintegration or disruption of social and environmental routines; cumulative effects from repeated exposure to disasters; and other distressing events, children will experience a traumatic conditions, despair, frustration, apprehension and loneliness detrimental to their general well-being and development.¹⁵⁸ For instance, as the Pakistan example above depicted, there is a potential risk that the losses, hardships and uncertainties following the flooding can have high costs for childrens' mental and psychological well-being. In addition to the potential mental health effects, catastrophic events may subject childrens' to physical harms, gender based violence and abuses of various kinds; and may drag them to involve in illegal and dangerous activities, such as drug trafficking/addiction, child prostitution, theft and other crimes so as to overcome the hardships.¹⁵⁹

3.3 The Right to Health

The CRC, other international and regional human rights instruments recognize the right to the highest attainable standard of health and impose corresponding obligations over States Parties to take steps to fully realize the right.¹⁶⁰ Specifically, Article 24 of the CRC, recognizing the child right to the enjoyment of the highest attainable standard of health, builds on and develops the

¹⁵⁸ Ibid; As a study undertaken by UNICEF ascertained, there are evidences which aver that children are likely to suffer mental health problems due to anxiety about future climate change; and exposure to catastrophic events related to climate change increase Post Traumatic Stress Disorder (PTSD) such as, depression, anxiety, stress, increased aggression, bedwetting and others. Similarly, an investigation made by Save the Children on the 2005 Hurricane Katrina, which hit New Orleans, Louisiana (one of the poorest state in the USA) documented that, as a result of the storm 1,800 people were killed, one million were forced from their homes and 372,000 children were left without schools. Consequently, children were sheltered in "overcrowded, noisy, poorly equipped shelters without safe places to play; a year after the storm, many children still living in temporary situations developed high rates of anxiety and depression." UNICEF, Our Climate, our Children, our Responsibility: The Implication of Climate Change for the World's Children, cited above at note 31, p.16; and Save the Children, Legacy of Disasters: The Impact of Climate Change on Children, cited above at note 31, p.6

¹⁵⁹ Save the Children Research in 2007 found that during emergencies, children face serious risks of exploitation, child trafficking, early marriage, recruitment to hazardous activities and conditions - as they and their families turn to desperate means of survival as a result of factors such as unemployment, lack of protection, poverty and unequal distribution of power, and others. Save the Children, In the Face of Disaster: Children and Climate Change, cited above at note 7, pp. 4-6

¹⁶⁰ Article 25 (para.1) of UDHR; Article 12 of the ICESCR; Article 5 (e) (iv) of International Convention on the Elimination of All Forms of Racial Discrimination (CERD), General Assembly resolution 2106 (XX) of 21 December 1965; Article 12 of CEDAW; Article 28 of CMW; Article 24 of CRC; and Article 25 of the CRPD. Regionally, Article 10 of Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"; Article 11 of European Social Charter; Article 16 of ACHPR; and Article 14 of The African Charter on the Rights and Welfare of the Child (ACRWC), (Adopted in Addis Ababa, Ethiopian on 11 July 1990 and entered into force on 29 November 1999)

right to life, survival and development.¹⁶¹ Of course, as all human rights are interdependent and indivisible, realizing the child's right to health is also connected with other rights of the child such as, the right to adequate standard of living; the right to benefit from social security; the right to education; protection from all forms of physical or mental violence; protection from economic exploitation; the right to rest and leisure; the right to engage in play and recreational activities, and others.¹⁶² Like Hunt and Khosla observed, this shows that beyond the medical care, "environmental, social, cultural, economic, political and other settings that make people need medical care in the first place" or intensify existing health problems are equally important determinants.¹⁶³

Similar to its effects on the right to life, survival and development, climate change affects child right to health directly and indirectly. The direct effects are manifested in terms of increasing trends and changing patterns of epidemics and diseases. Indirectly, climate change influence children's vulnerability to diseases by challenging their coping ability, increasing exposure to communicable and non-communicable diseases, damaging accessibility of health services - either affecting the coping capacity of families or destroying and damaging the physical infrastructure and, displacements and conflicts consequential to climatological effects may also lead to negative health effects.

The first facet encompasses diseases such as, diarrhoea, malaria, cholera, cardiovascular disease associated with heat waves, dengue fever and other water and vector borne diseases which are highly sensitive to changing conditions of climate change. As WHO long-established, these are

¹⁶¹ UNICEF- "Implementation Handbook for the Convention on the Rights of the Child", cited above at note 122, p.344

¹⁶² In their commentary on Article 24 of the CRC, Eide and Barth put forth the need to interpret and apply the right to health in the light of the other rights guaranteed under the CRC, such as: the right to life, survival and development (Article 6); the child right to benefit from social security (Article 23); the right to a adequate standard of living (Article 27); the right to education (Articles 28 and 29); and others. Similarly, the Committee on Economic, Social and Cultural Rights in General Comment No. 14 interpreted the right to the highest attainable standard of health defined under Article 12 of the ICESCR as "inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health." See A. Eide and W. Barth, "Article 24: The Right to Health", in A. Alen, J. Vande, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (ed.) cited above at note 143, pp.4-6; and CESCR General Comment No. 14: The Right to Highest Attainable Standard of Health (Art. 12), HRI/GEN/1/Rev.9 (Vol. I), 11 August 2000, para.11

¹⁶³ P. Hunt and R. Khosla, cited above at note 50, p.238. The CESCR has also made clear that the right to the highest attainable standard of health does not refer merely to the absence of disease or infirmity, but to a wide range of socio-economic factors; CESCR General Comment No. 14, cited above, para.4

diseases which kill children in large numbers each year and place an enormous burden on child health.¹⁶⁴ For instance, as pointed out in the preceding section¹⁶⁵, every year 2 million childrens' under five years old die as a result of diarrhoeal and other water born diseases, of which an estimated 85,000 are due to climate change.¹⁶⁶ Similarly, malaria causes 1 million deaths each year; 75% to 80% of deaths occur on children younger than 5 years old.¹⁶⁷ Besides these deadly effects, millions more children become ill every year, living them weak and further exposed to the effects of malnutrition and opportunistic infections.¹⁶⁸

For instance, out of the general diarrhoeal disease infections, 80% occurs in children under five years old.¹⁶⁹ This appears to be the major reason why diarrhoeal remains one of the leading causes of death worldwide for young children.¹⁷⁰ Severe flooding, storm, drought, acute water shortages - affecting availability of water for personal hygiene and preparation of food; contamination of freshwater supplies from flooding - forcing people to use untreated water for drinking and crop production; high temperatures; and others that are highly attached with climate change have further effects of increasing the risk of infectious waterborne diseases including diarrhoeal, especially in areas where sanitation facilities are poor.¹⁷¹ The IPCC projection also indicates that in low-income countries, climate change will increase the burden of diarrhoeal disease by approximately two to five percent by 2020.¹⁷² The harmful effects are noticeable not only with respect to diarrhoeal, but also with other water-borne diseases such as cholera – the

¹⁶⁴ According to the 2009 WHO report, 90% of the burden of malaria and diarrhoea, and almost the entire burden of diseases associated with undernutrition (which WHO designated as the most important climate-sensitive diseases) are born by children aged 5 years or less, mostly in developing countries. WHO, “Protecting Health from Climate Change: Connecting Science, Policy and People”, (2009), (<http://www.who.int/globalchange/publications/reports>), last visited on September 29, 2012, pp.10-16

¹⁶⁵ See notes cited above at 124-128

¹⁶⁶ See note cited above at 133

¹⁶⁷ See note cited above at 131

¹⁶⁸ UNICEF, Our Climate, our Children, our Responsibility: The Implication of Climate Change for the World's Children, cited above at note 31, p.9. Furthermore, a study made by Save the Children stated that:

Since most cases of diarrheal in children are caused by inadequate sanitation, poor hygiene and unsafe drinking water, ... [accessing clean water is already a daily challenge for more than 1.3 billion people around the world], if global temperature increases by 2°C, an additional 1 billion to 3 billion people will experience water stress...contributing to the growing incidence of diarrhoea and other water-borne diseases. (foot note omitted)

Save the Children, Feeling the Heat: Child Survival in a Changing Climate, cited above at note 31, p.3

¹⁶⁹ WHO, Global Health Risks: Mortality and Burden of Disease Attributable to Selected Major Risks, cited above at note 6; and S. Bartlett, cited above at note 31, p.19

¹⁷⁰ A. Üstün and C. Corvalán, cited above at note 6, p.9

¹⁷¹ L. Nerlander, Climate Change and Health, (2009), (<http://www.ccdcommission.org>), last visited: 02-April-2012, p.1 and F. Wiley, “Healthy Planet, Healthy People: Integration Global Health into the International Response to Climate change”, Journal of Environmental Law and Litigation, Vol.24, (2009), p.210

¹⁷² IPCC, cited above at note 2, p.401

micro-organism that can cause it (cholera pathogen) is highly sensitive to high temperatures, water scarcity, water abundance resulting from flooding or heavy precipitation and heavy rain fall.

Among the vector-borne diseases, climate health impact literatures focus primarily on malaria and dengue fever. Malaria is a climate-sensitive vector-borne illness to which children are particularly vulnerable. It exposes up to 2.5 billion people worldwide to the risk; and causes 350 million to 500 million illnesses annually, among which given their exposures children constitute the largest part.¹⁷³ According to the International Save the Children's report, in Africa alone Malaria is responsible for the death of around 800,000 children under five years old.¹⁷⁴ It is projected that, "[a] 2°C rise in global temperatures could lead to changes in the distribution and numbers of mosquitoes, and is predicted to result in an additional 40–60 million people being exposed to malaria in Africa."¹⁷⁵

Besides, its direct health threat, malaria contributes to anaemia in children – a major cause of poor growth and development – and in pregnant women, contributing to maternal deaths, low birth weights and neonatal deaths.¹⁷⁶ As does diarrhoeal, increasing temperature which has the effect of shortening the viral incubation period and breeding cycles; flooding which will have the potential to create breeding space; and changes in rainfall patterns affecting the transmission season and extent – including expansion of geographical range - which are the likely results of climate change and variability, make malaria and related vector-borne diseases such as dengue fever, Schistosomiasis (bilharzias), Yellow fevers, Lyme disease (ticks) and others to intensify in occurrence.¹⁷⁷

Indirectly, the impact of climate change on nutrition and food security, provision of water and sanitation, displacement of families leaving their possessions and vital supplies, or generally frail livelihoods and social conditions threatens the coping capacity of families; and families who hardly maintain their livelihood would hardly afford the cost for bringing/sending their children

¹⁷³ Save the Children, Feeling the Heat: Child Survival in a Changing Climate, cited above at note 31, p.10

¹⁷⁴ Save the Children, In the Face of Disaster: Children and Climate Change, cited above at note 7, p.4; and MDG Report 2012, “Assessing Progress in Africa toward the Millennium Development Goals”, cited above at note 132

¹⁷⁵ Ibid

¹⁷⁶ Save the Children, Feeling the Heat: Child Survival in a Changing Climate, cited above at note 31, p.10

¹⁷⁷ UNICEF, Global Climate Change and Child Health: A Review of Pathways, Impacts and Measures to Improve the Evidence Base, (2009), (http://www.unicef.at/fileadmin/medien/pdf/Climatechange_Childhealth.pdf), last visited: 22-March-2012, p.8

to health care services. In addition, as it has been noted in the preceding section, displacement owing to environmental anomaly caused by climate change may give rise to separation of families (for different reasons) and this aggravates the mental (psychological) and social health effects on children. Similarly, increases in the severity and frequency of extreme events and the resultant depression and anxiety have prospective mental health effects.

Also, rapid climate change induced displacement increasing the chances of large-scale exposure to infectious diseases is another potential health threat attributable to climate change. The risks are heightened when there is significant population displacement and, settlement in abnormal and overcrowded condition held back by poor disease control activities which will result in the outbreak of diseases. Children account for large proportion of displaced persons following natural disasters or conflicts and the situation makes them susceptible to adverse health effects - because of their physical and developmental immaturity.¹⁷⁸ Likewise, an increase in the frequency and intensity of extremes of temperature, precipitation, exposure to high levels of ground-level ozone and heat waves which are highly associated with respiratory and cardiovascular disorders will subject or exacerbate children's exposure to non-communicable diseases such as asthma and other respiratory diseases.

Finally, flooding consequent to storm tide or heavy rain damaging or destructing health service infrastructure and facilities, which in turn impede access to health services and medicine represent a major indirect effect of climate change on the child right to health. Furthermore, effects on other infrastructures supportive to health services, including destruction or damage on houses, electricity, transportation, road infrastructure and other physical infrastructures further heighten the problem. In all these situations, children, expectant mothers and women in need of post-natal health services are particularly vulnerable to the brunt.¹⁷⁹

3.4 The Right to Adequate Standard of Living

Article 27 of the CRC acknowledges the child right to adequate standard of living for their full development; and lists the different components of the right which States parties need to fulfill

¹⁷⁸ Id, p.9; and S. Bartlett, cited above at note 31, p.29

¹⁷⁹ The Pakistan example cited above at notes 151-155 is the best example depicting the impact of climate change on infrastructure in general and specifically on health facilities and services and its potential dire consequences on the right to health of the child.

using their maximum available resources. Among others, the rights to physical, mental, spiritual, moral and social development are the basic components stated under the provision as essential to fully realize the right to adequate standard of living.¹⁸⁰ This links the provision with one of the fundamental principles of the CRC set out in Article 6 – the child right to development to the maximum extent possible.¹⁸¹ Moreover, Article 27 states (though not exhaustively) nutrition, clothing and housing as essential needs for the continuous development and improvements of living conditions of the child.¹⁸² Beyond these three aspects, the right to water¹⁸³ and the ‘right to freedom from hunger and malnutrition’¹⁸⁴ as well are often considered as components inextricably linked to assuring the right to adequate standard of living. Yet, the different components are not mutually exclusive. The holistic understanding of full development of the child requires beyond material resources such as nutritious food, safe water, clothing and housing - which are necessary but insufficient physical development ingredients.¹⁸⁵ Additionally, “stable, nurturing social relationships and safe, stimulating environments” promoting child’s mental, spiritual, moral and social developments needs to be upheld.¹⁸⁶

The CRC basically imposes obligations on States parties to provide facilities necessary for child development on the parent(s) and others responsible for the child, taking into account their capabilities and assistance from their governments.¹⁸⁷ Families and other caregivers need to be empowered so that they can fulfil their responsibility towards children. Accordingly, the current and future strength of the family and society in which children live are important determinants of child well-being. Conversely, violation of the right occurs not only when the child’s living

¹⁸⁰ Article 27 (1) of CRC

¹⁸¹ UNICEF, “Implementation Handbook for the Convention on the Rights of the Child”, cited above at note 122, p.393

¹⁸² Article 27 (3) of CRC

¹⁸³ Article 11 of the ICESCR (analogous to Article 27 of the CRC) under paragraph one provides that, “[t]he States Parties ...recognize the right...to an adequate standard of living..., *including* adequate food, clothing and housing...” (emphasis added) The CESCR latter interpreted this paragraph as applicable to imply the ‘the right to water’ seeing that the word ‘include’ is inserted to indicate non-exhaustiveness of the provision; CESCR, General Comment No. 15: The Right to Water (Arts. 11 and 12 of ICESCR), E/C.12/2002/11, 20 January 2003, Para. 3

¹⁸⁴ Article 11(2) of the ICESCR; See also CESCR, General Comment No.12: The right to Adequate Food (Art.11), HRI/GEN/1/Rev.9 (Vol. I), para.1; and Article 1(2) of ICCPR providing for the right not to be deprived of one’s own means of subsistence in any case.

¹⁸⁵ B. Andrews, “Securing Adequate Living Conditions for Each Child’s Development”, in B. Andrews and N. Hevener, Implementing the UN Convention on the Rights of the Child: A Standard of Living Adequate for Development, (1999), p.8

¹⁸⁶ Id, pp. 4-7

¹⁸⁷ Article 27(2) of CRC

condition is directly implicated; but also, when the capacity of his/her parent(s) and other care givers are restrained. This section therefore look at how climate change encroach upon the child right to adequate standard of living from the perspective of both the child's actual standard of living and access to opportunities through his parent(s) and caregivers.

3.4.1 The Right to Food

The right to food is one of the fundamental human rights recognized under international and regional human rights instruments; though most often subsumed under the right to adequate standard of living.¹⁸⁸ The CRC do not explicitly recognize the right to food. But, it is possible to read the right in to the CRC as the right is indirectly implied with regard to the States parties' obligation to take steps concerning provision of nutrition¹⁸⁹ and taking in to consideration the interdependence of human rights. The legislative history of the CRC tells us that, a proposal was submitted to include a separate full article on the right to food as one of the fundamental rights of the child; but the matter was never discussed and therefore not included in the final draft.¹⁹⁰ It is not, however, stated why the proposal was not considered at all. Nevertheless, the CCRC frequently expressed its concern about measures taken domestically and internationally with regard to their impacts on factors essential for the development of the child, including matters related to the right to food.¹⁹¹

¹⁸⁸ Internationally, Article 25, para.1 of the UDHR; Article 11 of ICESCR; Article 12 and 14 of CEDAW; and Article 28 of CRPD recognize the right to food as one of the components of the right to adequate standard of living. Regionally, Article 12 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" distinctly recognize the right to food. Though the ACHPR, similar to the CRC, do not have explicit provision on the right to food, the African commission on Human Rights, in the *Ogoniland case* asserted that, the right is implicit in the ACHPR, in such provisions as the right to life, the right to health and the right to economic, social and cultural development. On the other hand, the ACRWC recognize the obligation of States parties to take measures to ensure the provision of adequate nutrition (Article 14 (2) (c)). *The Social and Economic Action Rights Center and the Center for Economic and Social Rights v Nigeria*, cited above at note 117, para.64; For more detailed analysis on the international protection of the right to food, see OHCHR, "The Right to Food", Fact Sheet No.34; G. Kent, "Freedom from Want: The Human Right to Adequate Food", (2005); and C. Golay and M. Özden, "The Right to Food: A Fundamental Human Right Affirmed by the United Nations and Recognized in Regional Treaties and Numerous National Constitutions", (2006), (<http://www.fao.org/righttofood/KC/downloads/vl/docs/AH260.pdf>), last visited on September 17, 2012

¹⁸⁹ The indirect and of course, marginal reference to the right to food under the CRC includes: Article 27 (3) noting the obligation of States parties to take "... appropriate measures ..., in case of need, to provide material assistance and support ..., particularly with regard to nutrition,..."; and Article 24 (2) (c) – obliging States parties" to combat ... malnutrition, ... through the provision of adequate nutritious foods ..."

¹⁹⁰ OHCHR, "Legislative History of the Convention on the Rights of the Child", cited above at note 144, pp.897 and 898

¹⁹¹ N. Hevener and M. Luisa, "Drafting and Interpreting Article 27" in B. Andrews and N. Hevener, cited above at note 186; and UNICEF, "Implementation Handbook for the Convention on the Rights of the Child", cited above at note 122, p.398

The right to food, in the context of the child, basically guarantees adequate nutrition necessary for the child's physical, psychological and mental development. Thus, the nutritional aspects of the right to food are essential¹⁹²; and as the CRC underscores, States parties assume an obligation to take all appropriate measures to assist parents and others responsible, particularly with regard to nutrition.¹⁹³ This is notwithstanding the child's entitlement to have:

Regular, permanent and unobstructed access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate food ... corresponding to [the culture and tradition of children] and which ensure [their] physical and mental, individual and collective, fulfilling and dignified life free from anxiety.¹⁹⁴

This underscores the core contents of the right to food most often pointed out in relation with realizing the right: availability, accessibility, sustainability (ensuring food security) and acceptability.

It is self-evident within the above expression that, notwithstanding the corresponding obligations of States, children have the dimension of human rights that guarantees protection against measures and activities that directly or indirectly encroach upon their right to food, including the impacts of environmental degradation in general and climate change in particular. As the recent UN General Assembly Resolution noted, environmental degradation and the negative impacts of global climate change are among the major factors which exacerbate the global food crisis and threatened to violate the right to adequate food, which in turn contributed to malnourishment and hunger-related illness on children.¹⁹⁵

¹⁹² Mzikenge argues that, the right to food is broader than the right to adequate nutrition as recognized under some international and regional human rights instruments, including the CRC. For him, "one of the purposes of food is to achieve nutritional well-being of a person; but this is not its only function ... [rather], people use food for many other important purposes, including spiritual or religious purposes, at festivities or for entertainment, for social harmony and for agricultural purposes." but, as far as children are concerned, the nutritional aspect is given primary concern because it is essential for their optimal physical, psychological and mental development. D. Mzikenge, "Child Poverty and Children's Rights to Access to Food and Basic Nutrition in South Africa: A Contextual, Jurisprudential and Policy analysis", (2009), (<http://communitylawcentre.org.za/...rights>), last visited on September 29, 2012, pp.14-16

¹⁹³ Article 27 (3) of the CRC

¹⁹⁴ This explanation is taken from the definition of the right to food provided by the UN special rapporteur on the right to food; see UN Special Rapporteur on the Right to Food, "The Right to Food: What Parliamentarians can do in the Fight against Hunger", (2006), p.6

¹⁹⁵ UN General Assembly Resolution 66/158, The Right to Food, 27 March 2012. The UN Special Rapporteur on the right to Food has also acknowledged the potential severe impact of climate change on the right to food at the global level. O. De Scutter, Climate Change and the Human Right to Adequate Food: Contribution of the special

Climate change directly compromises the availability and accessibility of nutrition necessary to child livelihood and increases the risk of hunger and malnutrition. The 2012 estimates of undernourishment by the UN Food and Agricultural Organization (FAO) set that world-wide 870 million people are estimated to have been undernourished in the period 2010-2012 (representing 12.5% of the global population).¹⁹⁶ In 2010 alone, more than 100 million children under the age of five in developing countries were underweight; and it is estimated that child malnutrition is an underlying cause of death in an estimated 35% of all deaths among children under the age of five.¹⁹⁷ In addition, millions of children remain at a growing risk for diminished cognitive and physical development resulting from long-term undernutrition.¹⁹⁸ As the UN General Assembly emphasized, climate change and other environmental degradation is one of the likely cause for the brunt in company with the global food crisis, natural disasters, diseases and pests.¹⁹⁹

The IPCC Fourth Assessment report predicts with high confidence that malnutrition related with extreme climatic conditions may be one of the most important consequences of climate change because of the decline in yields from rain-fed agriculture by up to 50 % by 2020.²⁰⁰ The 2010 UNICEF's study on the effects of climate change on environmental health risks and malnutrition also indicate that, by then, there were 3.5 million early deaths due to malnutrition which is highly sensitive to changes in temperatures and precipitation and all disproportionately affecting children.²⁰¹ Though not exclusively attributable to climate change consequences, malnutrition outrageously contributes to the deaths of around 3.2 million children each year.²⁰² Specifically, as a result of flooding, warming and changes in rainfall increasing the occurrence and prospect of repeated drought cycles and ensuing agricultural loss, some 170 million children under five suffer chronic malnutrition each year.²⁰³

Rapporteur on the right to Food, (2010), (http://www.ohchr.org/.../Issues/Food/20120928_SRRTF_CFS39.pdf), last visited on September 02, 2012

¹⁹⁶ FAO, "The State of Food Insecurity in the World", (2012), p.8

¹⁹⁷ *Id.*, p.23

¹⁹⁸ UN, "The Millennium Development Goals Report 2012", (2012), p.13

¹⁹⁹ UN General Assembly Resolution 66/158, cited above at note 196

²⁰⁰ IPCC, cited above at note 2, pp.413-414

²⁰¹ UNICEF, Social Consequences of Climate Change: Advocating Multi-sectoral Climate Change Education for Child Rights; Quality education, Water and Sanitation, Health, Nutrition and Participation, (2010), ([unfccc.int/files/cooperation and.../education.../pdf/lac2010p06.pdf](http://unfccc.int/files/cooperation_and.../education.../pdf/lac2010p06.pdf)), last visited on April 10, 2012

²⁰² Save the Children, Feeling the Heat: Child Survival in a Changing Climate, cited above at note 31, p. 4

²⁰³ Save the Children, Legacy of Disasters: The Impact of Climate Change on Children, cited above at note 31, p.8

In relation to food security, though climate change caused problems will affect the lives and livelihood of millions of people (more of poor people), the brunt on children is projected to be more severe for the apparent vulnerability of children at the global as well as domestic level.²⁰⁴ Several studies describe manifold ways climate change will obstruct food security at the global level. On the whole, climate change has predictable impact on agricultural productivity and livestock as a result of climate change related disasters generally; and specifically, due to decline in the supply of water required for agriculture; change in rainfall pattern, precipitation level and increased temperature leading to an overall drying trend possibly causing draught; aridity and salination of soil resulting in reduction of arable land; increased rainfall accompanied with hurricanes and storm surges causing flooding and inundation potentially damaging or destroying agricultural production; climate change induced migration; and conflict trends consequential to competition over available resources.²⁰⁵ These effects of climate change along with other factors can negative impacts on sustainability of food.

Finally, it is also worth to mention the potential indirect impacts of mitigation measures on the child right to food; more particularly, the plausible adverse impacts biofuel (agrofuels) production poses. Though it is devised to counteract increasing level of greenhouse gas emissions from fossil fuels, there is an emerging issue as regards the potential grave threat to food security of using food crops to produce biofuels unless a specific regulatory mechanism is put in place to reduce its impact on availability and accessibility of food – particularly for the poor and hungry in the developing countries.²⁰⁶ In addition to the right to food, such mitigation measure will also have implications on other rights of the child such as, the right of the child to grow up in a family environment and cultural right of children, principally those belonging to indigenous peoples.²⁰⁷ As the UN special rapporteur has informed based on study made by the

²⁰⁴ E. Caisens and M. Padilla, cited above at note 50, p.26

²⁰⁵ A Report by the High Level Panel of Experts on Food Security and Nutrition, “Food Security and Climate Change”, (2012), pp.27-39; and FAO, “Climate Change, Water and Food Security”, (2011), pp.70-72

²⁰⁶ UN Special Rapporteur on the Right to Food, “The Impact of Biofuels on the Right to Food”, (2007), UNGA, A/62/289; and O. De Scutter, Climate Change and the Human Right to Adequate Food: Contribution of the Special Rapporteur on the right to Food to the meeting convened by the Friedrich-Ebert-Stiftung with the Committee on Economic, Social and Cultural Rights, (2010), (http://www.ohchr.org/.../Issues/Food/20120928_SRRTF_CFS39.pdf), last visited on September 02, 2012

²⁰⁷ See Articles 20 and 30 of the CRC; States parties to the CRC are always required to take in to account the cultural significance of traditional land and the quality of the natural environment while ensuring the rights of ensuring the all rights contained in the CRC and more particularly, the rights guaranteed under Article 30 of the Convention. See CCRC, General Comment No.11, cited above at note 14

World Bank, an increasing demand for the acquisition of land to produce biofuels could lead to eviction of land users and to the displacement of populations, particularly indigenous peoples, in order to make large-scale land deals for plantation.²⁰⁸

3.4.2 The Right to Water

The right to water is a human right recognized under international and regional human rights instruments; either impliedly or explicitly. The pioneer general international human rights instrument, UDHR, as well as the more concerned ICESCR do not explicitly recognize the right to water; but have provisions which are officially reinterpreted to include the right to water.²⁰⁹

The UN Special Rapporteur on the human right to safe drinking water and sanitation argued that the omission could be justified for two reasons. First, when understood in the context of the world of that time, countries were less urbanized and have few densely populated informal settlements, which meant that the issue of a lack of water was not as extreme as it is today. Secondly, there would have been an assumption that water, like air, is assumed to be available to all; thus, it was not necessary to explicitly mention the right to water.²¹⁰ However, when the water problem become a critical situation as it threatens the essence of life and human dignity, it became necessary to reinterpret the provisions so as to acknowledge the right and draw corresponding obligations of States. Accordingly, the CESCR interpreted Article 11 (1) of the ICESCR to include the right to water.²¹¹

²⁰⁸ According to the cross-referenced 2010 World Bank Report, out of 389 large-scale acquisition or long-term leases of land in 80 countries, 35% of the projects were meant to produce biofuels, placing biofuels production the second level next to food production accounting for 37%. If the situation continues in similar trend, it could also have the potential to decrease the land available for crops production. This will in turn exacerbate the global food price hike. For instance, a 2012 report made by High level Experts under the Committee on World Food Security asserted that, “increases in the area of land switched to biofuels were one of the underlying causes behind the higher and more volatile food prices in the last five years.” O. De Schutter, cited above at note 207, pp.2-4 ; E. Caisens and M. Padilla, cited above at note 50, p.32; A Report by the High Level Panel of Experts on Food Security and Nutrition, cited above at note 206, p.74; and FAO, “Climate Change, Water and Food Security”, cited above at note 206

²⁰⁹ Article 25 (1) of the UDHR and Article 11 (1) of ICESCR; Both the UDHR and ICESCR employ the same expression in defining the right to adequate standard of living, i.e., “[e]veryone has the right to adequate Standard of living for himself and his family, including food, clothing, housing and medical care...”²⁰⁹ Though the listings are not exhaustive, both instruments omit water.

²¹⁰ C. De Albuquerque and V. Roaf, “On the Right Track: Good Practices in Realizing the Rights to Water and Sanitation”, (2012), p.25

²¹¹ CESCR, General Comment No. 15, cited above at note 184, para.3. Similarly, though the European Social Charter do not explicitly recognize the right to water, the European Committee of Social Rights interpreted the right to adequate housing provided under Article 31 of the Revised European Social Charter as implying specific obligations related to access to safe drinking water. Under the ACHPR as well, the right to water is not recognized;

On the other hand, internationally – Article 27 (2) (c) of the CRC, Article 14 (2) (h) of CEDAW and Article 28 (2) (a) of the CRPD, and regionally – Article 14 (2) (c) of the ACRWC and Article 15 (a) of the Protocol to the ACHPR on the rights of Women in Africa²¹² - explicitly recognize the right to water. Though the emphasis under the CRC is made in the context of the child’s right to enjoy the highest attainable standard of health, the right to water is significantly related with fulfilling other rights of the child; it is often taken as part of the catalogues of rights under the right to adequate standard of living.²¹³ In addition, the 2010 UN General Assembly resolution on the human right to water and sanitation²¹⁴, and several resolutions of the Human Rights Council²¹⁵, explicitly recognize the right to water. Generally, these international and regional human rights instruments and the jurisprudences therein constitute the legal basis for the right to water for everyone, including children.

As defined by the CESCR, the right to water refers to an entitlement everyone has to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.²¹⁶ The right basically prescribes the accessibility of water in sufficient quantity (availability), free from adverse substances (quality) and sustainably (water security).²¹⁷ But, as the CESCR emphasized, though States parties are required to take measures geared towards the full realization of the right, primary concern should always be given to “water resources required to personal and domestic uses; prevent starvation and disease; and water required to meet the core obligations” under each of the Covenant rights.²¹⁸ Water is the essence of life indispensable to sustain life and health, and fundamental to the dignity of all. It is also a precondition for the

not even the right to adequate standard of living. But, drawing inspiration from the jurisprudence of the African Commission on Human Rights, it appears possible to draw the right to water from other rights under the Charter as the Commission draw the right to food and adequate housing based on the combined effects of other related under the ACHPR. See OHCHR, “The Right to Water”, (Fact Sheet No.35), p.6; and *The Social and Economic Action Rights Center and the Center for Economic and Social Rights v Nigeria*, cited above at note 117, paras.60-66

²¹² Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, OAU, Resolution AHG/Res.240 (XXXI)

²¹³ CESCR, General Comment No. 15, cited above at note 184, para.3

²¹⁴ UN General Assembly Resolution, The Human Right to Water and Sanitation, (2010), A/RES/64/292

²¹⁵ Human Right Council Resolution, Human Rights and Access to Safe Drinking Water and Sanitation, (2008), A/HRC/7/22; Human Right Council Resolution, The Human Right to Safe and Clean Drinking Water and Sanitation, (2009), A/HRC/12/8; and Human Right Council Resolution, The Human Rights to Water and Sanitation, (2010), A/HRC/RES/15/9

²¹⁶ CESCR, General Comment No. 15, cited above at note 184, para.2

²¹⁷ Id, paras.10-12

²¹⁸ Id, para.6

enjoyment of other important rights. As a specific group, it is also of crucial importance for the child's physical, mental, spiritual, moral and social development.

Yet millions of people including children are suffering from lack of access to clean drinking water. According to the 2012 MDG report, though the world has met the MDG drinking water target (except Oceania and sub-Saharan Africa), still 11% of the global population (around 783 million people) remains without access to an improved source of clean drinking water, and 605 million people will lack coverage in 2015.²¹⁹ Poorer people, particularly in sub-Saharan Africa (40% of all people without drinking water), are at a disadvantage in access to drinking water.²²⁰ It has been stated previously²²¹ that, diarrheal and other water-borne diseases sensitive to access to clean-drinking water and sanitation claim the lives of millions of children; the considerable portion of which is attributable to climate change. In tune with this, the 2012 MDG report affirm that mortality is more likely to strike children in rural areas – where there is lack of clean-drinking water and sanitation.²²²

Though the problems are generally attributable to social, economic and political challenges, such as demographic changes, increasing consumption, limited capacity, political commitment and governance, there are evidences suggesting climate change as the major threat exacerbating the problem.²²³ For instance, the UN Special Rapporteur on the rights to water and sanitation emphasize that “the impact of climate change on the availability of safe water resources need to be considered in order to ensure access to sufficient quantity of safe water, and that necessary mitigating measures are in place for water management in times of water stress, whether from flooding or drought.”²²⁴ In addition, the IPCC fourth assessment report already projected with a very high confidence level that, adverse effects of climate change on freshwater systems aggravate the impacts of other stresses, such as population growth, changing economic activity and urbanization; and the problem is massive in already water-stressed regions, particularly in

²¹⁹ UN, “The Millennium Development Goals Report 2012”, cited above at note 199, p.52

²²⁰ Ibid

²²¹ See notes cited above at 127 and 133

²²² UN, “The Millennium Development Goals Report 2012”, cited above at note 199, p.28

²²³ OHCHR, “The Right to Water”, (Fact Sheet No.35), cited above at note 212, p.1; and OHCHR, “Climate Change and the Human Rights to Water and Sanitation”, cited above at note 30, p.16

²²⁴ C. De Albuquerque and V. Roaf, cited above at note 211, pp.115-118; In another report, the special rapporteur further outlined the likely decrease in water availability in areas already relatively dry such as Middle East and North Africa, parts of Southern Africa, South and Central Asia and South America. OHCHR, “Climate Change and the Human Rights to Water and Sanitation”, cited above at note 30, p.18

vulnerable low income countries.²²⁵ It has empathically cautioned that climate change impacts upon freshwater resources are putting at risk the reduction of child mortality, even with the existence of optimal water resource management.²²⁶ The effects so far appear fitting to the warning. It can therefore be concluded, based on the particular facts that climate change directly compromised the child right to access to safe and clean water resources, due to the already visible and predicted changes in the quantity and quality of water.

To the above, it can be added that contamination of water sources as a result of climate change caused flooding, draughts, increasing water temperatures, higher or lower groundwater levels and others will not only affect the quality of water, but will provide fertile ground for the proliferation of water-borne diseases or become habitat for vectors and other diseases related with personal and environmental hygiene.²²⁷ For instance, in the Pakistan incidence considered in the above sections, where an estimated 8.6 million children were affected by the flooding, Oxfam report stated the tripling of the risk and number of cases of acute diarrhea, skin disease, acute respiratory infections and malaria (due to the stagnant water).²²⁸ Because, the flood damage and destruction of water infrastructure and electricity facilities left families living in temporary shelters or out in the open without access to clean water and sanitation facilities.²²⁹ Specifically, UN reported that 3.5 million children were at risk of deadly water-borne diseases such as, watery diarrhea, cholera and dysentery from lack of clean water, contamination of water during the flood and sanitation problems.²³⁰ The impact due to the floods is expected to continue to be felt for years. UNICEF assessment one year after the flooding revealed that access to an improved water sources and sanitation remained a critical issues.²³¹

²²⁵ IPCC, cited above at note 2, pp.174-210

²²⁶ Id, p.200

²²⁷ OHCHR, "Climate Change and the Human Rights to Water and Sanitation", cited above at note 30, pp.17-20

²²⁸ Oxfam Fact Sheet on Pakistan Floods, cited above at note 154; See also European Commission Humanitarian Aid and European Civil Protection, Factsheet on Pakistan Monsoon Floods, (2010), (http://www.ec.europa.eu/commission_2010.../floods_pakistan_en.htm), last visited on September 07, 2012

²²⁹ Ibid

²³⁰ UN Office for the Co-ordination of Humanitarian Affairs, Pakistan: 3.5 Million Children at Risk of Deadly Diseases, (2010), (<http://www.96.reliefweb.int/organization/ocha?...country>), last visited on September 07, 2012; and UNICEF Pakistan Country Office Annual Report 2010, (2010), (http://www.unicef.org/pakistan/UNICEF_Pakistan_2010_COAR.pdf), last visited on September 07, 2012

²³¹ UNICEF, Children in Pakistan: One Year After the Floods – Turning Towards a Bright Future, (2011), (<http://www.unicef.org>), last visited on September 07, 2012, p.6

Furthermore, increased rain fall and consequent flooding or river flows, or increased temperatures and the incidence of drought will sweep away, inundate water structures or impair the physical infrastructure and facilities necessary for water supply. This can affect accessibility and quality of water, and will create further burden on children for collecting water from distance places – subjecting children to abuse, violence child labour and exploitation.²³²

3.5 The Impact of Climate Change on other Rights of the Child

Other than the right to life, survival and development, the right to health, the right to food and the right to clean and safe water, climate change has also its negative impact on other rights of the child. Among others, children require providing and maintaining safe, stable and stimulating physical and social environments which are necessary for the child’s physiological, mental and general psycho-social development. The physical environment includes, *inter alia*, physical structures such as, adequate house, schools (education centers), and safe and accessible place/space to engage in play and recreational activities. Social environments includes providing stable and nurturing family and social environment; protecting children from abuse, neglect, exploitation and violence; protecting children from impacts of armed conflict; and the rights of the child to enjoy and take part in the culture activities. Since these second aspects were touched on in the previous sections²³³, the subsequent discussion draw attention to the impact of climate change on some of the stated physical conditions and the ramifications thereof on the corresponding rights of the child.

3.5.1 The Right to Adequate Housing

Among the physical arrangements necessary for the well being of the child, Articles 16 (1) in conjunction with 27 (3) of the CRC recognizes the right to housing. The right is also recognized under other international and regional human rights instruments.²³⁴ Content wise, as the CESCR

²³² According to the 2012 MDGs report, in households in sub-Saharan African without piped water on their premises, children under the age of 15 bear considerable burden (15%) of collecting water next to women (62%) and Men (23%). Such trends will affect the different rights of the child such as, protection from interference with the child’s education (Article 32 of CRC); the right to rest and leisure, to engage in play and recreation activities (Article 31); and protection from economic exploitation (Article 31). UN, “The Millennium Development Goals Report 2012”, cited above at note 199, p.54

²³³ See sections 3.2.2 and 3.4.1 above

²³⁴ Internationally; Article 25 (1) of the UDHR, Article 11(1) of the ICESCR, Article 17 of ICCPR, Article 14 (2) (h) of CEDAW, Article 43 (1) (d) of CMW and Article 5 (e) (iii) of CERD, Article 28 (1) of CRPD; and regionally - Article 31 of the European Social Charter, and Article 11 (2) of Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights recognize the right to housing.

articulated, the right to housing is broadly interpreted to include not only a structure with a roof and walls but also encompass the “right to live somewhere in security, peace and dignity.”²³⁵ As a human right, the right to housing is inextricably linked to virtually all other human rights and it is meant to be ensured for everybody.²³⁶ For children as well, without regard to the material resources required²³⁷, the right to house is of utmost importance. Because, as the CRC coined, childrens’ are holders of rights and given its interdependence with other rights under the convention, the right to housing underlie a number of conditions which are essential to ensure the well-being of the child.²³⁸ For instance, as the 2002 UN General Assembly Declaration on ‘A World Fit for Children’ noted, “[a]dequate housing fosters family integration, contributes to social equity and strengthens the feeling of belonging, security and human solidarity, all of which are essential for the well-being of children.”²³⁹

Yet, climate change creates a big challenge in an effort to ensure the protection of this right. Extreme events like torrential rainfall, flooding as a result of heavy rainfall or rising sea levels accompany by storms surges; and ensuing incidents such as landslides, avalanche, drowning and inundation will cause the destruction of homes leaving large number of families homeless or forcing them in to temporary sanctuary. According to the Global Humanitarian Forum study report, in 2009 alone 150 million people were involuntarily displaced or forced from their homes by wether related disasters, gradual environmental degradations and sea levels.²⁴⁰ Out of this, roughly 26 million displacement cases are exclusively attributed to climate change and each year 1 million additional people are estimated to be displaced by weather related disasters brought on by climate change.²⁴¹

In addition, the 2011 report of the UN Special Rapporteur on the Human Rights of Internally displaced persons stated that in 2010 at least 42.3 million people were internally displaced by

²³⁵ CESCR, General Comment No.4: The Right to Adequate Housing (art.11 (1)), HRI/GEN/1/Rev.9 (Vol. I), para.7

²³⁶ Ibid

²³⁷ Id, paras.7 and 9; The CESCR emphatically note that the right to housing has to be ensured to all persons irrespective of income or access to economic resources

²³⁸ UNICEF, “Implementation Handbook for the Convention on the Rights of the Child”, cited above at note 122, pp.398-401

²³⁹ UN General Assembly Resolution 27/2 , A World Fit for Children, A /RES/S-27/2, 11 October 2002, para.27

²⁴⁰ Global Humanitarian Forum, “The Anatomy of A Silent Crisis”, cited above at note 7, p.48

²⁴¹ Ibid

sudden-onset natural disasters; 90% of which were due to climate change.²⁴² When we consider the fact that in majority of instances women and children constitute more than 75% of displaced persons²⁴³, it is easy to decipher the effects on child well-being given their natural vulnerability.²⁴⁴ Beyond homelessness, such incidences will also have the effect of breaking off family relationships and social networks; and in emergency camps and other interim settlements children are most often at an increased risk of abuse, exploitation and violence.

3.5.2 The Right to Education

The other physical environments which are of far-reaching importance for the overall well being of the child are schools where educational processes are undertaken. The right to education is recognized under Articles 28 and 29 of the CRC and in other international and regional human rights treaties. It is often recognized as an enabling right fundamental to ensure the realization of civil, political, social, economic and cultural rights of the child.²⁴⁵ Within the broader framework of interdependence and indivisibility of human rights, acts or omissions undermining the enjoyment of one or several of other rights will also have impact on the enjoyment of the right to education.²⁴⁶ It follows that, the impacts of climate change on the rights of the child discussed hitherto, in one or another way, have effect on the child's psychological, cognitive, physiological or social development impacting the child's ability or opportunity to continue or get education.

²⁴² UN General Assembly, Protection and Assistance to Internally Displaced Persons, (Report of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons), A/66/285, 9 August 2011, para.18

²⁴³ UNICEF, Our Climate, our Children, our Responsibility: The Implication of Climate Change for the World's Children, cited above at note 31, p.23

²⁴⁴ Practically, UNICEF documented a number of instances from 2007 massive flooding in Sindh up to the 2011 flooding affected Balochistan provinces of Pakistan where millions of people were forced from their homes due to climate change related extreme events. For instance, within the period mentioned, flash floods in North Korea made 170,000 people homeless; similar event in China caused the destruction of 6,000 homes; and thousands of homes destroyed because of monsoon rains in South Asia. These events exemplify the impact of extreme climatic events, most particularly on the rights of the child. Because, in most cases, it is children who are or were forced to stay in makeshift camps without proper shelter or access to basic amenities. On the other hand, the 2010 Pakistan massive flooding which has continued through to 2011 destroyed or damaged over 1.8 million houses (in 2010 alone) leaving a similar amount of people, most of whom are women and children, to be accommodated in schools, emergency shelters and other makeshift sites. One year after the floods (in July 2011) 53, 000 flood-affected internally displaced persons were in camps. See UNICEF, Our Climate, our Children, our Responsibility: The Implication of Climate Change for the World's Children, cited above at note 31, p.6; Congressional Research Service, Flooding in Pakistan: Overview and Issues for the Congress, cited above at note 155, p.17; UNICEF, Children in Pakistan: One Year After the Floods – Turning Towards a Bright Future, cited above at note 232, p.5; and UNICEF, 2012 UNICEF Humanitarian Action for Children, (2012), (<http://www.unicef.org/hac2012>), last visited on November 02, 2012, p.1

²⁴⁵ CESCR, General Comment No. 11: Plans of Action for Primary education (Art.14), HRI/GEN/1/Rev.9 (Vol. I), 1999, para.2

²⁴⁶ CCRC, General Comment No.1: Article 29 (The Aim of Education), CRC/GC/2001/1, 17 April 2001, para.6

Regarding the impact on the physical infrastructures and institutions, though there is lack of global scale comprehensive empirical figures depicting the overall impact of climate change, there are specific instances where the devastating effects of extreme weather events were noticed. For instance, as UNESCO recorded, in the aftermath of Cyclone Sidr which struck Bangladesh in 2007, 74 government primary schools destroyed and another 8,817 damaged; an estimated 103,664 children were affected as a result.²⁴⁷ Similarly, the August 2005 Hurricane Katrina, which hit one of the poorest states in USA (New Orleans, Louisiana), left 372,000 children without schools.²⁴⁸ Likewise, due to the devastating effects of the 2010 Pakistan flooding 11,000 schools were damaged or destroyed while many others (almost 2,900) were turned in to accommodation centers for internally displaced persons; immediately affecting the education of an estimated 1.8 million children.²⁴⁹ These instances demonstrate the severe consequences of a changing climate challenging the child right to education.

3.5.3 The Child Right to engage in Play and Recreational Activities

Environmental degradation; damage or destruction of the surroundings where childrens' live; sanitation problems consequential to extreme climatic events; settlements in overcrowded, poorly equipped and unsafe shelters consequent to displacement; frequent and hazardous events in already slum and densely populated urban and rural areas; and other dire environmental conditions compromise the child right to rest and leisure, and to engage in play and recreational activities.²⁵⁰ The CCRC articulated that the right to rest, leisure and play require child-centered, secure, supportive, stimulating and stress-free environments; free from pollution and other hazardous environments.²⁵¹ It does also require installing and/or preserving the necessary infrastructures and services. Though the implementation of these rights does not usually shown

²⁴⁷UNESCO, Education Sector Response to Climate Change, (2012), (unesdoc.unesco.org/images/0021/002153/215305e.pdf), last visited on April 17, 2012, p.2

²⁴⁸ Save the Children, Legacy of Disasters: The Impact of Climate Change on Children, cited above at note 31, p.6

²⁴⁹ UNICEF, Children in Pakistan: One Year After the Floods – Turning Towards a Bright Future, cited above at note 232, p.14; UNICEF, Children in Pakistan: Every Child's Right - Responding to the Floods in Pakistan, (2010), (http://www.unicef.org/.../files/Pakistan_Update_Dec_2010.pdf), last visited on September 07, 2012, p.14; and Congressional Research Service, Flooding in Pakistan: Overview and Issues for the Congress, cited above at note 155, p.17

²⁵⁰ S. Bartlett, cited above at note 31, pp.35-41

²⁵¹ CCRC, General Comment No.7, cited above at note 146, para.34

up and therefore easily noticed in the activities of States parties²⁵², they are essential for the general well-being and development of children.

3.6 Implications on the Rights of the Child

Facts and analyses presented so far present strong evidence that climate change and consequent adverse events are big threat to the protection and promotion of the human rights of children. The CRC, which is ratified almost universally, is mainly adopted to improve the situation of children at global level - who were then under apparently painful conditions. Among others, when the Convention was adopted, it was admitted that around 3.5 million children die annually from preventable or curable disease, 155 million children under five years old live in absolute poverty, 50 million children worked under unsafe or unhealthy conditions and million others were sexually exploited or resorted to prostitution and other worst situations in order to survive.²⁵³ As the UN declaration, issued one year after the adoption of the CRC documented, preventable diseases such as diarrhoeal, malaria, pneumonia and other diseases together with hunger and malnutrition were responsible for the mortality of the great majority of children under five years old.²⁵⁴

Generally, very many children were exposed around the world to dangers that risk their life and hamper their growth and development.²⁵⁵ The reality was that not all children were protected from life threatening circumstances or provided with the means necessary for their survival and development.²⁵⁶ Notwithstanding different changes (for instance, demographically) and improvements in the meantime, the problems then as well as today are attributable to different factors. However, this day, more than two decades later, the plight of climate change alone

²⁵² Ibid; see also UNICEF, "Implementation Handbook for the Convention on the Rights of the Child", cited above at note 122, pp.469-477

²⁵³ A. Glenn, cited above at note 16, p.vii; A. Eide and W.B. Eide also stated that when Article 24 (2)(c) of CRC was initially proposed by India, it was a meant to reflect in particular the dominant problems facing children in many developing countries. By then a large number of children, particularly in the poorer sector of the population were reported to die before the age of five, due to malnutrition, unsafe water and sanitation, and communicable diseases. A. Eide and W.B. Eide, "Article 24: "The Right to Health", in A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (ed.), cited above at note 17, pp.25

²⁵⁴ UN General Assembly Resolution 45/625, World Declaration on the Survival, Protection and Development of Children, (2009), A/45/625, 18 October 1990, paras.7-14

²⁵⁵ Id, paras.4-7

²⁵⁶ A. Glenn, cited above at note 16, p.vii

become serious condition unacceptable to the wellbeing of children and threat to realize child rights.

Particularly, the impacts of climate change on the rights of the child constitute critical challenge for achieving the MDGs. Though all the goals and targets set under the MDG are essential for the child, eradicating extreme poverty and hunger, universal primary education, reducing child mortality and ensuring environmental sustainability are directly relevant to the child. Notwithstanding improved remarks globally, in some regions already challenged by underdevelopment such as, least developed sub-Saharan African and Asia-Pacific countries, high climatic vulnerability and the already happening climate change impacts brought impediments for progress to achieve the MDGs.

For instance, as pointed out previously²⁵⁷, climate change is one of the underlying causes for sub-Saharan Africa and Oceania not to meet the MDGs access to clean drinking water target²⁵⁸; and if the trend continues the regions are unlikely to meet the target by 2015.²⁵⁹ The IPCC had already projected that, for the same water and sanitation problems, and consequent poor health conditions, the MDG of reducing the mortality rate in children aged under 5 years old by two-third by 2015 is unlikely to be reached in some developing countries.²⁶⁰ The 2012 MDG report authenticated the projection; under-five deaths in sub-Saharan Africa and Southern Asia form a larger share of the world total, and the regions stood far-behind the target.²⁶¹

Taking Pakistan (which has been mentioned all through this chapter in relation to its 2010 climate change induced flooding) as a classic instance, UNICEF's 2011 assessment averred that the pre-flood challenges facing the country (i.e., widespread chronic malnutrition, lack of access to clean drinking water, inadequate sanitation, lagging school enrolment rates, etc) were seriously exacerbated by the floods.²⁶² It is worth to note, however, that climate change and its

²⁵⁷ See notes cited above at 220-223

²⁵⁸ The MDG target of halving the proportion of population without sustainable access to safe drinking water has been met, five years ahead of the 2015 target except in Oceania and sub-Saharan African, neither of which is on track to meet the target by 2015; UN, "The Millennium Development Goals Report 2012", cited above at note 199, p.52

²⁵⁹ Ibid

²⁶⁰ B. Bates, W. Kundzewicz, S. Wu and J. Palutikof, (ed.), "Climate Change and Water", (IPCC Technical Paper VI), (2008), p.67; and IPCC, cited above at note 2, p.200

²⁶¹ UN, "The Millennium Development Goals Report 2012", cited above at note 199, pp.26-29

²⁶² UNICEF, "Children in Pakistan: One Year After the Floods – Turning Towards a Bright Future", cited above at note 232, p.7

negative consequences would not be blamed for the overall slow progress towards achieving the MDGs. Rather, population growth, political, governance and other social factors play significant role; though these would not blur the adverse impact climate change has and will have.²⁶³ In any case, the instances represent one of the more striking implications of climate change on the rights of the child.

Of course, goals and targets under the MDGs directly or indirectly concerning children do not replicate the ultimate purpose and objectives of the CRC; they will rather represent medium-term conviction of the international community to achieve concrete goals which will positively change the well-being and development of the child. The CRC is a tool for respecting, protecting and promoting the interest of children at all times and improving the situation of children universally and comprehensively far beyond the time set for the MDGs. The foregoing sections depicted the manifold ways the negative effects of climate change encroach upon the various rights of the child, the disproportionate burden thereof and, eventually, the vulnerability of children. The upheavals are basically the consequences of adverse impact of climate change on the natural environment.

It follows that, the environment has to be protected and preserved in the interest of abating the brunt of climate change. As the heads of States and Governments committed two decades before in the UN Millennium Declaration, the environment needs to be protected to “free all ... children and grandchildren [future generation], from the threat of living on a planet irredeemably spoilt by human activity, and whose resources would no longer be sufficient for their needs.”²⁶⁴ This in turn enlighten the need to take concrete action within the dominion of States and implied under international human rights laws and, more particularly, under the CRC; so that concrete solutions can be achieved.

3.7 Conclusion

As pointed out under chapter two, anthropogenic climate change has its basis in the different activities of States, and that the negative effects on the environment and, consequently on human being adversely affects the enjoyment or fulfillment of human rights. This chapter has started on

²⁶³ S. Dreft, S. Harmeling, C, *et al*, The Millennium Development Goals and Climate Change: Taking Stock and Looking Ahead, (2010), (<http://www.germanwatch.org/klima/klimdg10e.htm>), last visited on September 12, 2012

²⁶⁴ United Nations Millennium Declaration, cited above at note 20, section IV

dealing the relationship among the environment, environmental right and other human rights which are to great extent dependent on the existence of safe, clean and habitable environment. As it has been put forward succinctly, though international human rights instruments, including the CRC, do not explicitly recognize the human right to safe and clean environment, the negative effects of climate change on the environment and human beings affect the basic interests protected in other human rights as well. Accordingly, evidences are presented on how climate change challenge the protection of the child right to life, survival and development, the right to health, the right to food, water, housing, education and others. The facts raise momentum of concern for the rights of children's and the absolute necessity of action to save children from the overwhelming distress and give them a better future.

The basis of action this study premised on is human rights based approach to climate change. The desire of the international community to protect and promote the well-being and development of the child and settle challenges thereof are laid down primarily under the CRC. The covenant provides a comprehensive set of human rights standards and principles, as well as relatively (i.e., when compared with the environmental law) structured ways of monitoring compliance of States parties providing an opportunity for proactive implementation of the contents of the convention in different contexts. Thus, in the next chapter, based on the human rights obligations States Parties to the CRC and other main human rights treaties have assumed with respect to children, assessment is made as to how the standards and procedures declared therein can be best utilized to determine human rights obligations of States parties vis-à-vis the adverse effects of climate change and the course of action that has to be pursued to spare children from the problems they are exposed to and already suffering from.

CHAPTER FOUR

HUMAN RIGHTS FRAMEWORKS FOR THE PROTECTION OF THE RIGHTS OF THE CHILD FROM THE PREDICAMENTS OF CLIMATE CHANGE

4.1 Introduction

It is an established human rights obligation of States to respect, protect and promote human rights universally. Based on the respective international human rights treaty a State is party, it is required to take all appropriate measures within their purview and relevant in the circumstances in order to satisfy their obligations and thereby ensure the full realization of human rights. Such obligation exists in all circumstances where the conduct of a State directly or indirectly impacts upon the enjoyment of human rights. The forgoing chapters made it clear that climate change is not attributable to natural swings, but substantially caused by anthropogenic activities and that the negative effects encroach upon human rights; disproportionately affecting vulnerable sections, particularly children.

According to the conventional classifications of rules of international law, to which international human rights law is no exception, international rules can be set in three categories.²⁶⁵ Namely, primary rules - providing for how States have to act (in the context of climate change, to prevent damages caused by climate changes); secondary rules – norms applicable to establish responsibility for breach of obligations; and tertiary (procedural) rules – standards which define the framework for the enforcement of the legal consequences prescribed under the secondary rules.²⁶⁶ Along this line, this chapter inquires in to substantive human rights obligations of States in general and separately, the extra-territorial application of human right obligations vis-avis climate change. These are conditions precedent to base claims or remediate damage. After that, as secondary rules are more often captured in it, the doctrine of state responsibility regarding human rights obligations is examined. Tertiary rules in respect to the monitoring and interpretative procedures under the CRC are reserved for separate final discussion.

²⁶⁵ R. Verheyen, cited above at note 84, pp. 2-3

²⁶⁶ Ibid

4.2 Human Rights Obligations of States

The legal question which arises in connection with international human rights law concerning climate change is whether States have human rights obligation to contain greenhouse gas emissions and/or prevent or limit consequent damages to the rights of the child. Apparently, human rights laws, unlike the environmental legal regimes, do not specifically state the commitments of States to reduce greenhouse gas emission or to undertake other mitigation or adaptation measures. Rather, human rights laws scope is, often, limited to defining the substantive rights and freedoms and the corollary obligations on States parties logically discerning from the entitlements. In view of this, what can possibility be done within the domain of human rights law is to analyze and establish a casual connection between obligations of States related with the rights of the child implicated by climate change²⁶⁷, and examine their implications to the climate change impacts and how such obligations extend beyond territorial jurisdiction – as the sources and impacts of climate change are disperse.

4.2.1 Norms setting up the Obligations to Restrain the Adverse Effects of Climate Change

In the ascertainment of the primary rules implying human rights obligations vis-a-vis climate change, central attention is made here only to the rights of the child considered in the previous chapter. Accordingly, by appealing to major human rights documents and the jurisprudence therein, this section looks at how the provisions can be interpreted or interpreted to bring possible duties to limit climate change.

Let us first take the right to life. The right to life is the most fundamental of all human rights recognized in international and regional human rights documents.²⁶⁸ It is accepted as a *jus cogens* rule essential for the exercise of all other human rights.²⁶⁹ As recognized by the CCRC,

²⁶⁷ Identifying human right obligations already included in international and regional human rights treaties is the straight forward way of defending any particular human right or establishing corollary obligations of concerned body. In this respect Bell argued that:

One attraction of showing that particular human rights has already been included in international human rights conventions is that, rights that have been widely recognized in international law may be less controversial than rights that have not been recognized in international law... and we may be able to avoid offering moral arguments to support our fundamental rights commitments.

D. Bell, cited above at note 29, pp.99-124

²⁶⁸ In addition to the CRC, internationally - Article 3 of UDHR, Article 6 of ICCPR, Article 10 of the CRPD, Article 9 of the CMW; and regionally – Article 4 of the IACHR; Article 2 of ECHR, Article 4 of the ACHPR, and Article 6 of Arab Charter on Human Rights - recognize the right to life.

²⁶⁹ HRC, General Comment No.6, cited above at note 122, para.2-5; and M. Nowak, cited above at note 143, p.1

the right to life also constitutes one of the general principles of the CRC.²⁷⁰ Generally, the right to life is the most fundamental, universal and supreme right which has to be respected and protected in all circumstances.

As the HRC noted in one case, “the inherent right to life is a general rule the purpose of which is to protect life.”²⁷¹ Content wise, the right entails obligation over States parties: to refrain from arbitrary killings of individuals, to take effective measures to prevent the missing and disappearance of individuals²⁷²; refrain from extraditing individuals where their right to life is endangered in the receiving country²⁷³; and refrain from acts or omissions which will likely cause arbitrary loss of life such as, acts of mass violence, genocide and war.²⁷⁴ What is common in all these articulations is that, they conceive life threatening activities as against the protection of the right to life. Accordingly, States Parties are required to abstain from any action or omission that could possibly take life away or expose to life threatening situations – more often framed as the obligation to respect the right to life.

As chapter three has presented²⁷⁵, the dire consequences of climate change originating in the different greenhouse gas emitting activities of States claim the lives of millions of children each year and exposes millions others to life threatening situations. In fact, not all activities of States are ill intentioned or done with the motive to interfere against the child right to life. However, where their conduct exceeds the level required to stabilize greenhouse concentrations in the atmosphere so as to prevent dangerous interference with the climate system²⁷⁶ and the fatal consequences thereon, they need to restrain their activity – negative obligation to respect the right to life. The obligation persists even where the deadly effects have not yet materialized, but very likely to be so. As Stephens expressed, “it is not always taking a person’s life that violates

²⁷⁰ CCRC, General Comment No. 5, cited above at note 157, para.12

²⁷¹ HRC, *Judge v. Canada*, cited above at note 122, para.10.3

²⁷² HRC, General Comment No.6, cited above at note 122, para.4

²⁷³ The HRC has expressly stated that where a country has abolished death penalty, there is an obligation not to expose the person to the real risk of death penalty by extraditing to a country where the person is sentenced to death, without assuring that the penalty would not be executed. HRC, *Judge v. Canada*, cited above at note 122; and HRC General Comment No.31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, HRI/GEN/1/Rev.9 (Vol. I), para.12

²⁷⁴ HRC, General Comment No.6, cited above at note 122, para.2

²⁷⁵ See chapter three, section 3.2

²⁷⁶ Article 2 of the UNFCCC

[the right to life] but also placing a person's life in critically dangerous situation.”²⁷⁷ Thus, it is possible to construe the right to life as forbidding States' greenhouse gas emissions or other activities which give rise to climate change and ensuing interference on the right to life.²⁷⁸

As Article 4 of the CRC inform, though negative obligations are indispensable, they would not comprehensively ensure the realization of different ranges of the child right to life. Positive measures are equally necessary. But, the credit in recognizing positive dimensions of the right to life goes to the 1982 HRC's General Comment drawing attention to broader interpretation of the right; requiring States to take positive measures with respect to infant mortality, increasing life expectancy, eliminating malnutrition and epidemics.²⁷⁹ In the context of the CRC, diminishing infant and child mortality are specifically regulated under Article 24 of the CRC providing for the child's right to health. Later, based on the concept of 'inherent right to life' and “survival and development” together with Article 24, the CCRC has put forward far-reaching obligations of States concerning malnutrition, preventable diseases, homicide, suicide, harmful traditional practices and others – which are also acknowledged under different provisions of the CRC – as falling under the purview of positive obligations under Article 6 of the CRC.²⁸⁰

²⁷⁷ P. Stephens, “Applying Human Rights Norms to Climate Change: The Elusive Remedy”, Vermont Law School Legal Studies Research Paper Series, (2010), p.52

²⁷⁸ In line with this, in their petition to the Inter-American Commission on Human Rights, the Inuit, having indicated that USA is party to the American Convention on Human Rights and ICCPR, both protecting the fundamental right to life, claimed the responsibility of USA for the environmental degradation resulting in life threatening conditions such as change in ice and snow level, and unpredictable areas of open water. Similarly, in the *Ogoni land* case, the African Commission on Human Rights held that, the pollution and environmental degradation to a level humanly unacceptable as a result of the oil operation, has made living a nightmare violating the most fundamental of all human rights, the right to life of the Ogoni Community. Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, cited above at note 73; and *The Social and Economic Action Rights Center and the Center for Economic and Social Rights v Nigeria*, cited above at note 117, para.67

²⁷⁹ HRC, General Comment No.6, cited above at note 122, para.5

²⁸⁰ CCRC General Comment No.7, Implementing Child Rights in Early Childhood, CRC/C/GC/7/Rev.1, (2006), para.10; The historical account of the CRC suggest that, it is the child right to survival as stated under the Article 6 of the CRC which is purported to carry more positive connotation than the right to life - though the latter can be reinterpreted to draw positive obligations. Both explanations, however, point out the obligations of States parties to undertake and promote conditions which shield, to the maximum extent possible, the life of the child. Moreover, when a proposal was made to include the right to life to the draft convention on the right of the child, the drafting group stated that, unlike the negative approach opted under the pre-existing covenants; “the CRC should be positive and should take in to account economic, social and cultural conditions.” See OHCHR, “Legislative History of the Convention on the Rights of the Child”, cited above at note 144, pp.364-366 M. Nowak, cited above at note 143, pp.17-18; and UNICEF- “Implementation Handbook for the Convention on the Rights of the Child”, cited above at note 122

On the basis of these, two related inferences can be made regarding climate change. First, the aspects deducible from the 'inherent right to life' are broader and include all factors which inhibit the best possible and healthy life of the child – including the problems climate change poses on child life. Secondly, measures to eliminate or reduce the serious effects of climate change on the rights of the child can be construed as component of the positive measures States are expected to take to reduce infant mortality and increase life expectancy, specifically by eliminating malnutrition and preventable diseases. These bring on board the duty to regulate emissions plus undertaking adaptation and mitigation measures. Generally, the broad interpretation of the right to life incorporates the negative as well as positive obligation to avoid risks climate change creates to the right to life.²⁸¹

The other classes of child rights on the basis of which States obligations can be established are the socio-economic rights analyzed under the preceding chapter; the child right to health, food, water, housing, education, engage in recreational and playing activities and other cultural rights. As the rights fall under the same category (in line with the traditional classification of human rights) and are inextricably linked and indivisible, they are treated here as one so as to determine all-embracing corollary obligations of States parties in the context of climate change, and that can well articulate the synergy.

International human rights instruments including, the CRC and ICESCR as well as some regional human rights treaties call in to attention the consideration of dangers and risks of environmental hygiene in implementing the conventions.²⁸² Specifically, Article 24 (paragraph 2) of the CRC makes a list of some of the measures that States parties should take to fully implement the child right to health. Among these are consideration of environmental conditions such as, the dangers and risks of environmental pollution; and maintaining environmental hygiene and sanitation. As the sub-provision is framed broadly, *inter alia*, it comprises detrimental environmental conditions that directly or indirectly impacts up on the child right to health – given that safe and healthy environment is one of the underlying determinants of health.

²⁸¹ There are also scholars who advocate for broader definitions of the right to life as an entitlement that enables each individual to "have access to the means of survival, realize full life expectancy, avoid serious environmental risks to life and to enjoy protection by the state against unwarranted deprivation of life"; P. Stephens, cited above at note 278, p.53

²⁸² Article 24 (2) (c) of CRC; and Article 12 (2) (b) of ICESCR

Along this line, the CCRC, while reviewing States reports, used to highlight its concern about the potential serious consequences on children of air and water pollution, and environmental degradation.²⁸³ Though the concerns are reflected in concluding observations addressed to individual States and skewed towards specific aspects of environmental problems, the reference to ‘environmental degradation’ in general was worth mentioning since it has important ramifications; basically to put-up obligations in respect to climate change. Because, though infrequently, the CCRC recently started on broadly interpreting environmental concerns under the CRC as constituting protection from specific incidences, including the negative effects on children of global climate change.²⁸⁴

The jurisprudences in other international and regional human rights bodies as well complement the formulation the CCRC has made. For instance, the CESCR has interpreted the right to healthy natural environment under the ICESCR (Article 12 (2) (b)) as imposing an obligation “to ensure...*the prevention and reduction of the population’s exposure to detrimental environmental conditions that directly or indirectly impact upon human health.*”²⁸⁵ Similarly, in the *Ogoni land* case, the African Commission on Human Rights held that:

the ACHPR, dictating the right to a healthy environment, in conjunction with Article 12 of ICESCR, requiring governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene ‘oblige governments to desist from directly threatening the health and environment of their citizens...[and] entails largely non-interventionist conduct from State[s] such as, not carrying out, sponsoring, or tolerating any practice, policy or legal measure violating the integrity of the individual with respect to the environment’.²⁸⁶

Though the *Ogoni land* case is not specifically about climate change and presents an example of regional jurisprudence, the recognition of the link among environmental hygiene, human rights and obligation to respect is exemplar in forming a direct link between environmental degradation in general and States human rights based negative obligation to restrain detrimental activities. In

²⁸³ UNICEF, “Implementation Handbook for the Convention on the Rights of the Child”, cited above at note 122, pp.357-359

²⁸⁴ See for instance, CCRC, Concluding Observation: The Philippines, cited above at note 359, paras.59-60; CCRC, Concluding Observation: Ecuador (on the 2nd and 3rd periodic reports), 39th session, 13 September 2005, CRC/C/115/Add.262, paras.53 and 54; CCRC, Concluding Observation: South Africa, 23rd session, 2 February 2000, CRC/C/15/Add.122, para.30; and CCRC, Concluding Observation: Namibia (on the 2nd and 3rd periodic reports), CRC/C/NAM/CO/2-3, 16 October 2012, para.7

²⁸⁵ CESCR General Comment No.14: The Right to Highest Attainable Standard of Health (Art. 12), HRI/GEN/1/Rev.9 (Vol. I), para.15 (emphasis added)

²⁸⁶ *The Social and Economic Action Rights Center and the Center for Economic and Social Rights v Nigeria*, cited above at note 117, paras.50-54

the same way, the European Court of Human Rights²⁸⁷ and the Inter-American Commission on Human Rights²⁸⁸ in a series of cases clarified that severe environmental pollution and noise affect individuals' well-being and their right to a healthy environment. Accordingly, States have an obligation to take reasonable measures to prevent the risks as well as to respond to persons who have suffered injury. Preventive measures include both restraining specific activity damaging environmental health and positive measures to safeguard the environment and, consequently, human rights.²⁸⁹

Besides environmental considerations in the interest of protecting the child right to health, chapter three²⁹⁰ has expounded that such considerations are also essential for the child's physical, psychological, mental and social development and overall wellbeing. The latter are in turn dependent on fulfilling the child right to food, adequate nutrition, water and sanitation, housing, education, and other family, social and environmental conditions. It has also been analyzed that children have the dimensions of human rights that guarantee protection from situations and/or activities that directly or indirectly encroach upon the stated rights.²⁹¹

Practically, evidences were presented in the preceding chapter where the rights are being violated due to factors related to climate change. Ultimately, since States parties have committed themselves to implement human rights, the practical violation of the rights in any given moment or situation brings on board the obligation of State parties; to respect, protect and fulfil the human rights. In the context of climate change, these obligations can be translated in to measures to contain environmental degradation in general and climate change in particular. More

²⁸⁷ European Court on Human Rights: *Powell and Rayner v. the United Kingdom*, Application No. 9310/81, Judgment of 21 February 1990; *López Ostra v. Spain*, Application No. 16798/90, Judgment of 9 December 1994; and *Guerra et al. v. Italy*, Application No. 14967/89, Judgment of 19 February 1998; *Hatton and Others v. the United Kingdom*, Application No.36022/97, Judgment of 2 October 2001, para.97; and *oneryidiz v Turkey*, Application No.48939/99, judgment of 18 July 2002. Most of these cases involved health issues on account of environmental nuisance and industrial waste and were resolved on the basis mainly of the provision setting forth the right to privacy and family life. See also D. Shelton, "Human Rights, Health and Environmental Protection: Linkages in Law and Practice", (A Background Paper for the World Health Organization), (2002), (http://www.who.int/hhr/Series_1%20%20Sheltonpaper_rev1.pdf), last visited on June 17, 2012, pp.18-22

²⁸⁸ See *Awasi Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*, Inter-American Commission on Human Rights Report 40/04 (2004); and *Yanomami v. Brazil*, Inter-American Commission on Human Rights (1985). For an in depth discussion on jurisprudences of the Inter-American Commission on Human Rights in respect to environmental issues, see D. Shelton, "Environmental Rights and Brazil's Obligations in the Inter-American Human Rights System", *The George Washington International Law Review*, vol.40, (2009), pp.733-777

²⁸⁹ D. Shelton, cited above, p.752

²⁹⁰ See Chapter Three, section 3.1

²⁹¹ Id, sections 3.4.1, 3.4.2, 3.5.1, 3.5.2 and 3.5.3

particularly, the negative obligation to respect entails limit on the conducts of States parties that are putting up obstacles to the enjoyment of the above stated rights. For climate change problems, the means for meeting this obligation can be reducing the level of greenhouse gas emissions or taking other mitigation measures. On the other side of the spectrum, the positive obligation to respect, protect and fulfil entail obligation to take adaptation and other remedial measures requiring States parties to undertake affirmative action, including regulating the activities of entities within State's jurisdiction.

Generally, the normative frameworks analyzed hitherto set up the legal ground to require State parties to refrain from undertakings that directly or indirectly interfere with the enjoyment of the human rights; and in the context of the theme under discussion, regulate States' activities contributing to climate change and ensuing risk on the rights of children. It follows that, States have clear obligations under international human rights law in general, or the CRC in particular that require them to respect, protect and fulfil human rights so as to bring solutions to the problem of climate change and its impact on the rights of the child. Ultimately, responsibility for failure to comply with the obligation rests on the shoulder of States parties. But, before turning to the legal analysis of State responsibility in the context of climate change, the following section highlights on the territorial scope of the above mentioned human rights obligations – as this is a condition precedent to establish State responsibility for transboundary effects of their activities.

4.2.2 Territorial Scope of Human Rights Obligations

In principle, international human rights laws impose obligation on States parties to fulfil their obligations towards those individuals within their territorial boundary. This domestic effect of States' human rights obligations was for so long conceived as the restricted range of human rights obligations.²⁹² However, the changes in the nature of international law since the end of World War II and the more recent process of globalization led to a wider interpretation of traditionally territorial related concepts such as, jurisdiction and national sovereignty, in matters of human rights and invigorated the quest for extraterritorial application of human rights

²⁹² F. Coomans, "The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the work of the United Nations Committee on Economic, Social and Cultural Rights", Human Rights Law Review, vol. 11, No.1, pp.1-35; and M. Sepulveda, "The Obligations of International Assistance and Cooperation under the International Covenant on Economic, Social and Cultural rights: A possible Entry point to a Human Rights based approach to Millennium Development Goal 8" , The International Journal of Human Rights, (2009) vol.13, No.1, pp.86-109

obligations.²⁹³ Thus, there are now circumstances where a State is under duty to comply with human rights obligations outside its territory.

Based on the common territorial perception of human rights obligations, States are duty bound to desist from causing environmental harm, take reasonable measures to reduce environmental damages and take protective and preventive measures with respect to the activities of third parties. Transposed to the issue of climate change, this requires States to abstain from causing the problems as well as take reasonable measures to prevent or reduce the negative effects of harms originating outside the States' activities or jurisdiction. Accordingly, States parties have to properly react to human rights impacts of climate change though the problem did not necessary originated from their acts, but from the activities of identified or undetermined perpetrator.²⁹⁴

However, the territorially diffused sources and effects of climate change cannot be regulated only by measures taken at individual State's level. Besides, territoriality give relative discretion for States to take measures based mostly on human rights conditions prevailing in the State concerned; rather than the global reality.²⁹⁵ Apparently, such limited measures will largely remain futile; because, either the measures will be insignificant in the light of the global nature of the problem or they could be overtaken by counter activities elsewhere. Therefore, only comprehensive and coordinated measures will address the problem.

Most of the principal international human rights treaties have provisions defining their jurisdiction or scope of application.²⁹⁶ Among them, while CEDAW explicitly require States

²⁹³ S. Skogly, "Extraterritoriality: Universal Human Rights without Universal obligations", in S. Joseph and A. Mc Beth (eds.), Research Handbook on International Human Rights Law, (2010), pp.71-73; and J. Dennis, "Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation", The American Journal of International Law, (2005), vol. 99, No. 1, pp. 119-141

²⁹⁴ As Knox pointed out "States have obligation not only to refrain from causing prohibited levels of environmental harm to human rights, but also to protect against environmental harm not caused by the State itself or even by private actors with the acquiescence [or not] of the State." These duties are also recognized by the Inter-American Commission on Human Rights and the European Court of Human Rights where in both treated failure to take preventive steps to avoid ensuing harm originating outside the activities of the States as constituting violation of human rights. See H. Knox, cited above at note 29, p.195; Inter-American Commission on Human Rights, *Yonomami v. Brazil*, , Case 7615 (Brazil), INTER-AM.CH.R., 1984-1985 Annual Report 24, OEA/Ser.L/V/II.66, doc. 10, rev. 1 (1985), para.24; and European Court of Human Rights: *Fadeyeva v. Russia*, Application No. 15339/00, Judgment of 30 November 2005, paras.132–133; and *oneryidiz v Turkey*, cited above at note 288

²⁹⁵ H. Knox, cited above at note 29, pp.196-198

²⁹⁶ See for instance, Article 2(1) of ICCPR, CRC and CAT, Article 24 of CEDAW, Article 3 of CERD, Article 7 of the CMW, and Articles 9, 11 and 34 of the International Convention for the Protection of All Persons from Enforced Disappearance (Convention on Enforced Disappearance), UN General Assembly Resolution 61/177, of 12 January 2007. The ICESCR and CRPD do not explicitly define their spatial scope of application.

parties to adopt necessary measures at the national level, the rest use the terms ‘territory’ and ‘jurisdiction’²⁹⁷, either individually or jointly in delineating their respective territorial scope.²⁹⁸ On the basis of these terms and the general principle for universal protection of human rights, treaty bodies and other international forums used to make out extraterritorial obligations of States.

For instance, the HRC in its general comments and views in individual communications interpreted the phrase ‘within its territory and subject to its jurisdiction’, under Article 2 of ICCPR, as imposing obligations both within the national territory and to anyone within the power or effective control of the State party - even if not situated within the territory of the State.²⁹⁹ In the case *Celiberti v. Uruguay*, the HRC emphasized that, “it would be unconscionable to so interpret the responsibility under Article 2 of the Covenant [ICCPR] as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.”³⁰⁰ Therefore, the enjoyment of human rights under the ICCPR is not limited to citizens of a State party; but available to all individuals, regardless of nationality or statelessness, who may find themselves in the territory or subject to the jurisdiction of the State party. The latter incorporates those individuals within the power or effective control of the forces of a State party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained.³⁰¹

²⁹⁷ The terms ‘territory’ and ‘jurisdiction’ are not synonymous. While ‘territory’ is used to indicate geographical boundary, ‘jurisdiction’ is interpreted to refer to the personal or functional authority of a State over circumstance; and includes the acts and omissions of a State which produce effect or are undertaken outside the State’s territory. Similarly, the HRC noted that, “the reference in Article 2(1) of the ICCPR to ‘individuals subject to [State’s] jurisdiction’ do not refer to the place where the violation occurred, rather to the relationship between the individual and the State in relation to the violation, wherever they occurred.” See R. Mc Corquodale and P. Simons, “Responsibility beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law”, (2007), *Journal of Modern Law Review Limited*, p.602; and HRC, *Sergio Euben Lopez Burgos v. Uruguay*, Communication .52/1979, UN Doc CCPR/C/13/D/52/1979 (1981), para.12

²⁹⁸ ICCPR, CERD, CMW, Convention on Enforced Disappearance, employ both ‘territory’ and ‘jurisdiction’; whereas, the CRC and regional human rights treaties such as, ECHR, ACHR and ACHPR use only the term ‘jurisdiction’.

²⁹⁹ HRC General Comment No.31, cited above at note 274, para.10

³⁰⁰ HRC, *Celiberti v Uruguay*, Communication No.56/1979, UN Doc CCPR/C/13/D/56/1979 (1981), Para.12; The Inter-American commission of Human Rights also asserted the same reason in the case *Coard, et al v United States*, Inter-American Commission on Human Rights, Case 10.951, Report No 109/99 (29 September 1999), Para.37

³⁰¹ HRC General Comment No.31, cited above at note 274, para.10

Coming to the ICESCR, though the text of the Covenant did not have explicit provision on its territorial scope of application, on the basis primarily of Article 2(1) of ICESCR which provides for ‘international assistance and cooperation’³⁰², the CESCR has been developing its jurisprudence reflecting extraterritorial application of ICESCR. In its very first general comment, the CESCR noticed States parties to be aware that the various rights in the Covenant are to be enjoyed by ‘all individuals within the States’ territory or jurisdiction’.³⁰³ Like the HRC, the CESCR opine that the Covenant apply to all territories and populations under the States’ effective control (such as, areas where a State maintains geographical, functional or personal jurisdiction).³⁰⁴ Moreover, the ICESCR’s silence on its territorial scope is often conceived as a sign that the treaty obligations are applicable to every conducts of States regardless of where they have taken place.³⁰⁵ The recently adopted ‘Maastricht Principles on Extraterritorial Obligation of States in the area of Economic, Social and Cultural Rights’, though it reflects the opinion of only renowned scholars in the area, it is highly expected that it will bring new impetus and smoothen the contention in the extraterritorial obligations under the ICESCR.³⁰⁶

Regarding the CRC, Article 2 (1) provides that the Convention is applicable to each child within States parties ‘jurisdiction’. The CCRC has not yet dealt with the matter conclusively. However,

³⁰² The notion of ‘international assistance and cooperation is also stated under: para.1 of the preamble, Article 23 and 25 of The Covenant of the League of Nations, Signed at Versailles, June 28th 1919; Article 1(3), 55 and 56 of UN Charter; Article 22 and 28 of UDHR; Article 11(2), 22 and 23 of ICESCR; Article 3 of Declaration on the Right to Development, Resolution adopted by the General Assembly, UN Doc. 41/128, 4 December 1986; Article 4 and 24 (4) of CRC; Article 4 and 32 of the CRPD; and para.2 of United Nations Millennium Declaration, cited above at note 20

³⁰³ CESCR General Comment No.1: Reporting by States Parties, HRI/GEN/1/Rev.9 (Vol. I), para.3

³⁰⁴ CESCR Concluding Observations: Israel, UN Doc. E/C.12/1/Add.27 (4 December 1998), Para. 6. In par with the CESCR, ICJ held that:

The ICESCR contains no provision on its scope of application. This may be explicable by the fact that this Covenant guarantees rights which are essentially territorial. However, it is not to be excluded that it [ICESCR] applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction.

ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Reports 2004 131, Para.112; The Court has confirmed this position in its decision in *Democratic Republic of Congo v. Uganda – see Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, (Merits), Judgment of 19 December 2005, 45 ILM 271, Para.217

³⁰⁵ H. Knox, cited above at note 29, p.206; But this proposition falls under question when one consider Article 29 of the Vienna Convention on the Law of Treaties which provides that “a treaty is binding upon each party in respect of its territory, unless a different intention [of the States parties] appears from the treaty or is otherwise [explicitly] established in the treaty”. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 UNTS 331

³⁰⁶ The Maastricht Centre for Human Rights of Maastricht University and the International Commission of Jurists, Principles on Extra-Territorial Obligations of States in the area of Economic, Social and Cultural Rights, 28 September 2011, (<http://www.fian.org/.../maastricht-principles-on-extraterritorial-obligations>), last visited on June 21, 2012

in one of its general comments, it has indicated that State's party is responsible for ensuring the full implementation of the Convention "throughout the territories under its jurisdiction".³⁰⁷ Though the expression conceive territory as one of the components under jurisdiction, it does not make clear what the rest would be. In the absence of clarification, based on the broader interpretation of the word 'jurisdiction'³⁰⁸, it could be inferred that the material scope of the CRC is broader so as to include territory of a State party and cases where children are under the power or effective control of a State party. Because, the legislative history tells us that; first it was the phrase 'children in their territories' which was used to define the scope of the CRC under Article 2.³⁰⁹ Latter, though the phrase 'child in their territories or subject to their jurisdiction' was proposed to take the CRC further (may be, in terms of clarity) than the existing instruments, it was abandoned in the interest of maintaining consistency with the language of earlier instruments.³¹⁰ Finally, the word 'jurisdiction' is opted to replace 'territory' – so as to not undermine the general and universal nature of the scope of application of the CRC.³¹¹ Therefore, the CRC's use of 'jurisdiction' instead of 'territory' indicates its broader application.³¹²

The point is that, the jurisprudences of human rights treaty bodies as well as scholarly arguments in the area³¹³ are now moving towards the recognition of extraterritorial human rights obligation of States; yet it is not conclusively settled and there are States challenging the assertion.³¹⁴

³⁰⁷ CCRC, General Comment No.5, cited above at note 146, para.41

³⁰⁸ See note cited above at 298

³⁰⁹ OHCHR, "Legislative History of the Convention on the Rights of the Child", cited above at note 144, pp.314-334

³¹⁰ Id, paras.146 and 147

³¹¹ Id, paras.160-162

³¹² In addition to Article 2 of the CRC, extraterritorial application of the Convention can be inferred from provisions such as, Article 9 (3) providing for the rights of the child separated from one or both parents (particularly because of exile or deportation) to maintain relations and direct contact with his/her parent(s); Articles 4, 24 (4) and 28 (3) - providing for the obligation for international co-operation; and the possibility of inter-State communications under the OPCP.

³¹³ See for instance, F. Coomans, cited above at note 293; S. Skogly, cited above at note 294; J. Dennis, cited above at note 294; and O. De Schutter, "International Human Rights Law: Cases, Materials, Commentary", (2010)

³¹⁴ USA has been consistently resisting extraterritorial dimension of human rights obligation on the ground that the treaties, so far as they do not have explicit provision to this effect, for the mere fact that they have phrases such as 'within territory' or 'subject to jurisdiction', cannot imply extraterritorial obligation. See United States Initial Report, submitted to the HRC, U.N. Doc. CCPR/C/81/Add.4, (Aug. 24, 1994), Paras.12-25 and United States, Initial Report to the Committee Against Torture, U.N. Doc. CAT/C/28/Add.5 (Feb. 9, 2000). Similarly, in recent negotiations to adopt the Optional Protocol to the ICESCR, some Western States such as Canada, Sweden, the United Kingdom, the Netherlands and Sweden argued against extraterritorial legal obligation, particularly with respect to the obligation for international assistance and cooperation. Commission on Human Rights, Report of the Open ended Working Group to consider options regarding the elaboration of an Optional Protocol to the ICESCR, 3rd session, 14 March 2006, E/CN.4/2006/47, Paras.77-86

Nevertheless, even letting the contentions aside, the challenge with respect to climate change is the likelihood that the requirement of ‘effective control’ would even be met. Normally, ‘effective control’ (in the foretasted interpretations) ascribed as representing geographical, functional or personal jurisdiction of a State; and this presupposes some kind of physical or power relationship between the State in question and the individual. Apparently, such attribution excludes acts or omissions of a State which have effects outside the stated relationships. The question, therefore, is does this facet of States’ act or omission fall under the domain of ‘effective control’?

Normally, ‘effective control’ refers to an extant influence, restriction or regulation of the nature, behavior, characteristics, activity and other attributes of individuals or course of events using one’s activity, authority or power. Accordingly, the broader interpretation involves not only acts undertaken outside territorial boundary and having effect on individuals or course of events, but also situations where the acts or omissions of a State within its territory or elsewhere have influence on individuals or course of events somewhere. But, in the afore stated assertions of jurisdiction, the concept is applied in its limited sense as referring only to cases where a State has exercised functional, personal or territorial authority outside of the State, so that it would go in line with the principle of State sovereignty.

The inconsistency however is that, States have accepted in principal international human rights instruments and under the UN Charter to promote universal respect for human rights and fundamental freedoms. Furthermore, as the HRC has explained, the contractual dimension of the human rights treaty obligations involves any State party being obliged to every other State party to comply with its undertakings under the treaty – one is the obligation to respect human rights universally.³¹⁵ It follows that, where the conduct of a State compromises the enjoyment of human rights elsewhere, the State is required to take appropriate measures – because, the source of the problem is within the effective control of that State.

The international customary rule of prohibition of transboundary environmental damage (also called the ‘no-harm rule’) as well complements the assertion. Under this rule, States have the sovereign right to exploit the resources within their national territory pursuant to their national environmental and developmental policies; but with the corresponding obligation to ensure that

³¹⁵ HRC General Comment No.31, cited above at note 274, para.2

the activities do not cause damage to the environment of other States or of areas beyond their territorial jurisdiction. Though the principle has been raised primarily in the context of State responsibility (which is the subject for discussion in the next section), the underlying concept behind the principle is that, a State must not use or permit the use of its territory for the purpose injurious to the interests of other States.³¹⁶ Consequently, there are legal grounds to interpret the doctrine of ‘effective control’ as encompassing acts or omissions of a State having extraterritorial effect.

4.3 Responsibility of States

Having determined the primary rules laying down human right obligations and the territorial scope of the obligations, the next step is to establish the consequences for breach of a legal obligation, i.e., the secondary rules for State responsibility. In general legal context, the intrusion of one subject of law in the legally protected interest of another subject creates responsibility. Such responsibility arises from the international rules establishing rights and duties - as a corollary of binding legal obligations. This means that the concept of State responsibility is not a distinct regime holding within it distinct set of rules governing international relations; rather, it is a concept directly flowing from legally binding norms contained in treaties or customary international law.³¹⁷

However, in a continued effort to codify international norms of general application, the International Law Commission has prepared ‘Draft Articles on State Responsibility (DASR)’ in 2001. Though the Articles have not yet transformed in to a binding treaty, they have been used by international tribunals, as a basis in assessing State responsibility.³¹⁸ They are generally taken

³¹⁶ R. Verheyen, cited above at note 84, pp.145-191. There are authors who argue that the mention in human rights laws of the duty of State parties in general to respect the enjoyment of human rights by refraining from actions that interfere with the enjoyment of the rights, though not explicitly mentioned, are an extension of the ‘no-harm’ rule to human rights law; O. De Schutter, cited above at note 314, pp.165-166

³¹⁷ Article 1 of the Draft Article on State Responsibility (DASR) provides that, “every internationally wrongful act of a State entails the responsibility of that State.” Article 3 then states that, “[t]he characterization of an act of a State as internationally wrongful is governed by international law.” The message is that, the primary rules of conduct for States defining their rights and duties are the basis to establish whether an act or omission constitute a wrongful act. Draft Article on State Responsibility, ILC, 53rd session, (2001); see also Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, ILC, 53rd session, (2001), p.55

³¹⁸ Among others, the use of the DASR is justified for the fact that most of the articles reflect international law on the subject flowing from the accepted sources of international law as stated under Article 38 (1) (b) of Statute of ICJ. R. Verheyen, cited above at note 84, p.227; and E. Hostettler, “State Responsibility and Climate Change”, (<http://www.ehs.unu.edu/file/get/3595>), last visited on July 07, 2012, p.8

as secondary rules which support the primary rules defining the contents of the international obligations. In this section too, the DASR serve as a tool for the examination of the conditions and consequences of State responsibility for climate change damages on the rights of the child.

The DASR provides that ‘every internationally wrongful act of a State which arises from breaches of an international obligation, when an act or omission attributable to that State is not in conformity with what is required of it by that obligation, entails international responsibility of that State.’³¹⁹ The basis for responsibility, therefore, is incompatibility between the conduct required and the conduct actually adopted by the State. In every case, it is by comparing the two that one can determine whether or not there is a breach of obligation and consequent responsibility.³²⁰

As pointed out previously, States generally have the human rights obligation to prevent harm to the environment: either holding up their activities causing anthropogenic climate change or (and) taking other measures aimed at protecting human rights. Also, the customary law rule of ‘no-harm’ obliges States to ensure that activities within their jurisdiction or control do not cause significant³²¹ damage to the environment of other States or of areas beyond the limits of national jurisdiction. Although the ‘no-harm’ rule is framed generally to impose extra-territorial obligations for transboundary environmental harms, legal scholarship put the rule as containing obligations not to cause harm, to prevent foreseeable risk of harm and to minimize risk thereof.³²² Corollarily, it does also entail obligation to remedy harm in case damage is sustained. Thus, the rule will be of primary importance in the context of climate change.

As Kiss and Shelton put forward, “the ‘no harm’ rule requires *each State* to act reasonably and in good faith [and, thereby] regulate public and private activities subject to its jurisdiction or

³¹⁹ Article 1, 2 and 12 of the DASR

³²⁰ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, cited above at note 318, pp.54-55

³²¹ Literally, the ‘no-harm’ rule compromises the territorial sovereignty of States as it requires States to take action based on not only national interests, but in consideration of the transboundary effects on the interests of other State(s). However, it is not all activities of the State which would be subjected to limit. Rather, only those activities which could cause series or, at least, significant damage should be subjected to limitation. Such significant damage may be defined as ‘a damage which is more than detectable but not at serious or substantial level. C. Voigt, “State Responsibility for Climate Change Damages”, Nordic Journal of International Law, (2008), p.9

³²² Id, p.8; and S.J. Tol and R. Verheyen, State Responsibility and Compensation for Climate Change Damages – a Legal and Economic Assessment, (2004), (<http://www.citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1>), last visited on May, 15, 2012, p.1110

control that are potentially harmful to any part of the environment.”³²³ Thus, the major importance lies on its binding nature for all States. However, since climate change arise out of greenhouse gases released from activities meant for the development of the State, it is difficult to prove in every case that the State has acted with intent to injure other State(s). But, owing to the underlying rationale behind the ‘no-harm’ rule (i.e., the notion of good faith), it is not a requirement to show that the acting State specifically intended the harm to result.³²⁴ Thus, the other added value of the norm relates to the absoluteness of the responsibility (i.e., responsibility for acts not prohibited by international law irrespective of intent (fault) or of the lawfulness of the activity in question).

4.3.1 Elements for breach of Legal Obligation

One of the conditions for State responsibility is determining the relevant wrongful conduct.³²⁵ In the climate change context, the relevant wrongful conduct is allowing emissions of greenhouse gases to the level dangerous to the environment and not setting up appropriate regulatory mechanism. Since such conduct constitutes breach of the legal obligation, the State in question has to be held responsible. The difficulty, however, lies on establishing the greenhouse gas emission threshold beyond which a State can be said to have breached its obligations. Apparently, international human rights laws as well as the ‘no-harm’ rule do not provide the standard. The way out is to refer to international environmental law.

As it has been highlighted under chapter two³²⁶, the objectives under environmental law, more particularly, the UNFCCC is to stabilize greenhouse gas concentration in the atmosphere to a level that prevents dangerous interference with the climate system.³²⁷ Accordingly, States are duty bound to declare national inventories of anthropogenic emissions by source and removals by sinks of all greenhouse gases and other measures the State would take to facilitate adequate

³²³ A. Kiss and D. Shelton, cited above at note 70, p.91 (emphasis added)

³²⁴ In the *Trial Smelter case*, though the arbitral tribunal held Canada responsible for the transboundary damages USA has sustained, it did not dare to judge the legality of the operation or that Canada had specifically intended the harm to result or not. Rather, the tribunal concluded that, in no condition that a State use or permit the use of its territory in such a way as to cause serious injury by pollution, in the territory of another State. Accordingly, it concluded that the objective of the regime (i.e., ‘no-harm’ rule) is to protect the natural environment to the extent where agriculture (the activities alleged to have been severely affected in the claim by USA) was not affected and not to hinder the Smelter operation totally. *Trial Smelter Arbitration, United States v. Canada*, 16 April 1938 and 11 March 1941, vol.3, pp.1905-1982

³²⁵ Article 2(a) of DASR

³²⁶ See Chapter Two, section 2.2

³²⁷ Article 2 of the UNFCCC

adaptation to climate change.³²⁸ Specifically, the Kyoto Protocol prescribed that those countries listed in ‘Annex I’ of the Protocol shall, individually or jointly, ensure that their aggregate greenhouse gases emissions listed in ‘Annex A’ do not exceed their assigned reduction amounts inscribed in ‘Annex B’.³²⁹ Furthermore, notwithstanding the uncertainties attached with it, science has moved steps forward and it is now relatively possible to calculate the contributions countries have made and making to climate change based on their net emissions.³³⁰ Thus, though it is not yet possible to draw a distinct causal connection between emissions in a specific country and climate change impacts elsewhere (i.e., specific causation), extra-tone of emission can serve as a clue for determining the wrongful conduct and consequent responsibility.

The other element in the climate change – State responsibility interface is attributing responsibility to a State out of the manifold emitters in different parts of the world. The focus here is not on the issue of causation, which is already dealt under chapter two; rather, it is to make out the position of the DASR on the issue. Under Article 1 of the DASR, every internationally wrongful act of a State entails international responsibility. This presupposes an identified State which has acted wrongfully. But, as the ILC has recognized in its commentary to the DASR, the responsibility of a State for its wrongful act does not exonerate other States from being held responsible for the conduct in question or for the injury caused as a result.³³¹ Conversely, it gives an impression that the responsibility of a State does not diminish or reduced for the fact that other State(s) share the responsibility.³³²

The DASR further stated that, “where several States are responsible for the same international wrongful act, the responsibility of each State may be invoked in relation to that act”.³³³ The

³²⁸ Id, Article 4

³²⁹ Article 3 of the Kyoto Protocol

³³⁰ Based primarily on the requirements under the UNFCCC and the Kyoto Protocol, there are now efforts to come up with methods which enables to calculate the specific emissions of a State and its quantitative effect on climate change. Such models define the specific portion of emissions and the portions attendant effects on climate change which can be attributed to a particular country. In addition, as Hostettler articulated, there are growing scientific proofs regarding the specific emissions of countries. Instances the author cited were: Switzerland’s emission of 53,209 kilotons of greenhouse gas equivalent, Germany 1,005,215 kilotons and Australia 5,499,000 kilotons. It follows that, based on Verheyen’s theory of establishing causal relationship between every ton of extra emissions and the resulting climate change, responsibility can be attributed to a State in question. See R. Verheyen, cited above at note 84, pp.39-41; and E. Hostettler, cited above at note 319, p.10

³³¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, cited above at note 318, p.33

³³² Id, p.125

³³³ Article 47 of the DASR

phrase ‘...for the same international wrongful act...’ implies range of circumstances. Among others³³⁴, since it regulates situations of plurality of responsible States, it can be employed to address situations where several States by separate internationally wrongful conduct contribute to causing the same damage – as the case in climate change. It follows that; the responsibility of a State would not be reduced or precluded by reason of the concurrent responsibility of other State(s). Yet, the degree of liability of each participating State is determined individually, on the basis of its own conduct and by reference to its own international obligations (i.e., treaty law or customary law obligations).³³⁵

Climate change is a matter of cumulative causes - situation where several actors contribute to the event through historic and current emissions. Hence, it is the necessary to determine the causal link between the damage sustained and the interval - amid emissions and damage.

Articles 13-15 of the DASR regulate the problem of identifying when a wrongful act begins, how long it continues and when breach of an international obligation by the composite act of a State occurs. According to the principle under Article 13, breach of obligation occurs when a State does wrongful conduct while it is bound by an international obligation. This presupposes the existence of a legal obligation, and rules out retrospective application of international laws (including customary international law) in matters of State responsibility.³³⁶

However, Articles 14 and 15 provide that, the breach of an international obligation through a series of actions or omissions occurs when the definitive act, which taken together with previous acts, suffice to constitute the wrongful conduct occurs. In such instances, the breach extends over the entire period starting with the first of the actions or omissions of the series. Though this frame work was originally designed to denote international obligations which demand aggregate of conduct and not individual act such as, the obligations concerning genocide, apartheid, crimes

³³⁴ For instance, two or more States may act together to undertake joint operation, or perform it through a common organ responsible for the management of the operation, or one State may direct and control another State in the commission of the same international wrongful act. Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, cited above at note 318, p.124

³³⁵ Ibid; In support of its reasoning, the ILC cited the ICJ decision in the *Corfu Channel* case where Yugoslavia, which actually laid the mines which has eventually blown up the UK ship, and Albania - through which the ship transits and who failed to warn the ship the existence of mines which it knew or should have known - were held responsible for their respective action and inaction. Ultimately, both were held responsible to pay damages to UK.

³³⁶ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, cited above at note 318, p.57

against humanity and other systematic acts of discriminations³³⁷, it might also be relevant in the context of climate change where the aggregate conduct of a State (taking in to account historical emissions) is not inconformity with its international obligations. Therefore, keeping in mind the principle under Article 13, past or historical emissions will be a point where the State's responsibility will start off.

4.3.2 Legal Consequences of State Responsibility

Finally, it is worth to mention the legal consequences of State responsibility as regards climate change impacts on the rights of the child. Breach of an international obligation entails two consequences; the obligation to cease the wrongful act and/or the obligation to make full reparation for the injury sustained.³³⁸ Under the obligation to cease the wrongful act, the State is expected to regulate its activities giving rise to climate change; either effectively reducing its greenhouse gas emissions or increasing the support of carbon sinks.³³⁹ Thus, States are required to take prompt, appropriate and effective measures which cease or minimize the harm and loss on human persons and the environment.³⁴⁰

The other consequence is the obligation to make full reparation for injury sustained.³⁴¹ Taking in to account the nature and extent of the damage, the reparation can be made either in the form of restitution or compensation. In the context of climate change, since restitution will not always be possible, reparation will rather be made in the form of financial compensation to cover the cost of damage, the costs for mitigation or the cost of adaptation.

³³⁷ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, cited above at note 318, p.62

³³⁸ The principles of cessation and reparation to restore the *status quo* were recognized under the statute of the Permanent Court of International Justice (PCIJ) and they are now incorporated under the current Rome Statute establishing ICJ. The PCIJ applied the principle in the *Chorzow Factory case* (1928); Id, p.87; and T. Hillier, "Sourcebook on Public International Law", (1998), p.367

³³⁹ As the ILC stressed, two conditions needs to be met for the obligation of cessation to arise: that the wrongful conduct has to have a continuing character and that the violated rule has to be still enforce for the State concerned.

³⁴⁰ As provided under Article 30(b) of the DASR, where there is a reasonable ground to believe that the mere cessation of activities is not suffice in terms of protecting future potential breaches, State(s) will be required to offer appropriate assurance and guarantees for non-repetition of its activities.

³⁴¹ Though the obligation to make full reparation is articulated under Article 31 of the DASR, it traces its origin to the 1927 decision of the PCIJ in the *Chorzow Factory Case* where in the Court stated the obligation to make reparation as essential principle of international law inbuilt in the practices and decisions of international tribunals. The case is sited and applied in many occasions in latter cases decided by the ICJ or other tribunals. PCIJ, *Factory at Chorzow*, Jurisdiction, Judgment No.8, 1927, Series A, No. 9, p.21

Ultimately, to enforce their claims State(s) or individuals affected by the acts or omissions of another State may pursue, *mutate mutandis*, different procedures and processes established under different international, regional and national frameworks. Since the scope of this thesis is limited to the consideration of the impact of climate change on the rights of the child, the subsequent sections look into how the CRC's monitoring and implementation mechanisms as stipulated under the CRC can be used to save children from challenge climate change causes to the enjoyment by children of their rights.

4.3 Procedural Frameworks under the Convention on the Rights of the Child

4.3.1 General Background

The forgoing sections have established: the link between normative stipulations under the CRC and climate change; that the standards stipulate obligations for States vis-a-vis climate change; and that States have obligation to cease any wrongful conduct giving rise to climate change or exacerbate the problem. This section looks in to the monitoring mechanisms and processes under the CRC and its relevance to the impact of climate change on the rights of the child.

The treaty body entrusted with the power to monitor implementation of the CRC and progress of States parties is the CCRC.³⁴² It basically discharges its mandate through examination of reports of States parties and through the general comments it issues with the view to promote and assist State in further implementation of their obligations.³⁴³ Thirdly, though not yet entered into force, the third OPCP³⁴⁴ will enable the Committee to entertain individual and inter-State complaints alleging violation of human rights guaranteed under the CRC. For its mandates and emphasis on the rights of children, the CCRC can be taken as an appropriate forum which can deal with human rights violations related with the effects of climate change on the rights of the child.

The CCRC's role may take two forms; one, it will pinpoint the nexus among human rights, obligations of States parties and climate change - particularly when a challenge arise from a State(s) party claiming that environmental degradation in general or climate change in particular is the challenge for non-compliance with its obligations. Secondly, the CCRC will be approached under the OPCP to find remedies for harms that children have suffered or will suffer as a result

³⁴² Article 43 of CRC

³⁴³ Id, Articles 44 and 45

³⁴⁴ See note cited above at 24

of climate change or the mitigation or adaptation strategies taken. With these backdrop, the subsequent analysis look at the merit of each of the monitoring mechanisms to the context of climate change along with the limitations inherent in each of the mechanisms and the CCRC's works so far.

4.3.2 State Reports/Concluding Observations

4.3.2.1 State Reports

As stated under Article 44 of the CRC, States parties have the obligation to submit periodic reports to the CCRC concerning all appropriate measures they have undertaken in respect to their obligations under the Convention and the progresses therein. To help States in fulfilling these obligations, the CCRC has adopted general guidelines providing the form and content of State parties' reports.³⁴⁵ Accordingly, States parties are required to provide sufficient information regarding their overall activities, including those which will compromise the enjoyment of the rights set forth in the CRC or measures undertaken to harmonize national law and policy with the CRC. Furthermore, States reports are expected to point out factors or difficulties encountered affecting the fulfillment by a State of its obligations.³⁴⁶ This implies that, as will any other human rights treaty body, the CCRC is also likely to face challenge by the issue of climate change when those States affected or seriously threatened point to climate change as a cause for non-compliance with their obligations.

On the other hand, CCRC may itself request information from the State party in order to be able to better assess situations in the State party concerned, including information about how they are managing the threats or adverse effects of climate change in their territories or in other countries.³⁴⁷ Therefore, these occasions open the door for the CCRC to conduct a comprehensive review and address climate change - child rights linkage; clarify the international obligation of

³⁴⁵ CCRC, General Guidelines Regarding the Form and Content of Initial Reports to be submitted by State Parties under Article 44, Para.1 (a) of the Convention, CRC/C/5, October 1991; and CCRC, Treaty-specific Guidelines regarding the Form and Content of Periodic Reports to be Submitted by States Parties under Article 44, para.1 (b) of the CRC, CRC/C/5/Rev.2, 23 November 2010. The latter (under para.13) underline that reports of State parties, in addition to what has been required under the guidelines, should contain additional information specific to the implementation of the CRC taking to account the relevant general comments of the CCRC.

³⁴⁶ Article 44(2) of CRC

³⁴⁷ Article 44 of the CRC; CCRC, Rules of Procedure, CRC/C/4/Rev.2, 2 December 2010, Rule 73; and CCRC, Overview of the Reporting Procedures, CRC/C/33, 24 October 1994, para.20; and Human Rights and Climate Change: Practical Steps for Implementation, (http://www.ciel.org/Publications/CCandHRE_Feb09.pdf), last visited June 02, 2012

States; and monitor the activities of States, the measures they have adopted and the progress made in achieving the objectives set under the CRC vis-à-vis the impacts of climate change.

States parties are required to provide information according to the clusters of articles grouped by the CCRC under the guidelines for State reports.³⁴⁸ Among the clusters, those on ‘General principles (specifically the sub-group on the right to life, survival and development)’; and on ‘basic health and welfare’ are directly relevant in dealing with the issue of climate change vis-a-vis the rights of the child. Additionally, the sub-sections on factors and difficulties encountered; children deprived of a family environment; internally displaced children, children affected by migration; factors affecting the education of children; children belonging to a minority or an indigenous group and children in situation of emergency - are matters which the CCRC can make use of to acquire information and evaluate State activities regarding the impact of climate change and its effect on the enjoyment by children of their rights.

The concern with State reports, however, is that they will apparently limit the scope of the information they provide to situations within their jurisdiction. Evidently, States (particularly those countries making the largest contribution to the climate change problem) will not report on the effects of their activities on human rights situations extraterritorially. In contrast, States which are sustaining the effects of climate change will likely point to climate change as the cause making compliance with their obligations difficult. But the latter kind of reports alone will not provide comprehensive and sufficient information depicting the overall picture of the problem and the major causers whose activities has to be restrained.

Thus, to obtain complete picture of the implementation of the Convention’s terms, the CCRC will have to resort to the alternatives under Articles 44(4) and 45 of the CRC. Article 44(4) authorizes the CCRC to request States parties to furnish additional report or information.³⁴⁹ Such

³⁴⁸ To facilitate a structured discussion, CCRC guidelines on State reporting group the CRC article in the following eight groups: General measures of implementation (Article 4, 42 and 44(6)); Definition of the child (Article 1); General principles (Articles 2,3,6 and 12); Civil Rights and Freedoms (Articles 7, 8 13-17 and 37(a)); Family environment and alternative care (Article 5, 18(1 and 2), 9, 10, 27(4), 20, 11, 19, 39 and 25); Basic health and welfare (Articles 6(2), 23, 24, 26, 18(3), 27 (1-3)); Education, leisure and cultural activities (Articles 28, 29 and 31); and Special protection measures for Children in situations of emergency (Articles 22, 38 and 39), Children in conflict with the law (Articles 40, 37 and 39), Children belonging to a minority or an indigenous group(Article 30) and Children in situations of exploitation (Articles 32, 33, 34, 35, 36 and 39). See CCRC’s guidelines on reporting, cited above at note 345 and 347

³⁴⁹ See note 348 above

additional report or information has to indicate the national and international measures a State has undertaken to secure universal protection and promotion of human rights.³⁵⁰ The issue of climate change may fall under this catalogue. On the other hand, Article 45 of the CRC empower the CCRC to invite United Nations organs, specialized agencies and other competent bodies the CCRC considers appropriate, to submit to it reports or provide expert advice on the implementation of the CRC in areas falling within their respective mandates.³⁵¹ These bodies/organs can provide the CCRC with relevant information and documentation and assist it with identifying key issues in country reports in relations with the problems of climate change.

Generally, the wider and rigorous processes of reporting and the distinctive mechanism allowing non-State actors access to (by) the Committee, constitute a broad basis for the CCRC to be well-informed, undertake a wider and meaningful study, evaluate overall situation in a country, and the impact of the activities of a State on the universal protection and promotion of the rights of the child in respect to the impacts of climate change.

4.3.2.2 Concluding Observations

As of writing this thesis, the CCRC has directly mentioned climate change in its concluding observations to State Reports in four occasions. In its most recent concluding observation on Namibia, the CCRC took note of the fact that the State is one of the African countries affected by climate change and the increasing impact of natural hazards, such as floods, storms and droughts,

³⁵⁰ The Harmonized Guidelines on Reporting under the International Human Rights Treaties explicitly stated that, 'in accordance with the commitment of a State to respect, protect and fulfil human rights set out in the treaties to which it is party, the UNDHR and other international human rights instruments, a State has an obligation to undertake national and international measures to secure the universal and effective recognition and observance of human rights'. See The Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents, HRI/MC/2005/3, para.8 and the revised Guideline contained in document HRI/MC/2006/3, para.8

³⁵¹ Rule 74 of the CCRC Rules of Procedure, cited above at note 348. Commentators suggest that, the term 'other bodies' contained under Article 45(a) of the CRC or the CCRC Rule of Procedures has to be understood in the broadest sense so as to include NGOs, organizations on a regional level and others. The CCRC has already established a close working relationship with NGO Groups with regard to the CRC reporting process and other activities. It can, therefore, invite these NGOs or others to give expert advice or submit report where their scope of mandate includes the issues of climate change. Furthermore, involving effective participation of UNs treaty bodies, such as the Conference of the Parties under the UNFCCC supervising the implementation of the UNFCCC and subsequent treaties, UNICEF, as well as other bodies, including the IPCC, in the reporting process will enable the CCRC to get information or technical advice and assistance on the theme (i.e., climate change) or on specific issues through coordinated action. NGO Group 2010 Annual Report for the Convention on the Rights of the Child, (http://www.crin.org/docs/CRC_anrep11_web_lo.pdf/), last visited on July 19, 2012, p.3; and M. Verheyde and G. Goedertier, (2006), "Articles 43–45: The UN Committee on the Rights of the Child", in A. Alen, J. Vande Lanotte, *et al*, cited above at note 17

which are leading to changes in the disease patterns, reduced agricultural outputs and food insecurity.³⁵² The second instance is the concluding observation on Seychelles.³⁵³ This time as well, the CCRC acknowledged climate change as a major obstacle to the achievement of sustainable development goals in the country which has exacerbated problems related with scarce arable land, limited water resources and fragile biodiversity, all of which have negative impacts on the enjoyment of child rights. Specifically, the CCRC drew attention to the fishing industry in the country which is “acutely challenged by climate change [affecting] the rights and well-being of children and families living in the island State.”³⁵⁴ Thirdly, in its 2010 concluding observation on Nigeria, the CCRC uttered its concern about the negative effects on children of global climate change, including in the context of the desertification in the northern states of Nigeria.³⁵⁵ The final and far-off occasion is the concluding observation on Ecuador of 1998, where the CCRC has particularly noted the negative impact on children of the climatological phenomenon known as “El Niño”; especially owing to the damage the event caused in the agriculture and infrastructure of the country.³⁵⁶

Indirectly, the CCRC has reiterated its concerns regarding environmental degradation, particularly as it relates to: factors and difficulties impeding the implementation of the CRC; environmental health; and child rights and the business sector. Concerning the first aspect, the CCRC has noted in some instances that natural disasters (especially floods and drowning in company with cyclones and tropical storms), vulnerability to such disasters and pervasive poverty, drought, displacement, loss of lives and livelihoods consequential to the severe environmental events are factors which create difficulties and challenge the realization of the rights of the child under the CRC.³⁵⁷ Secondly, in few instances pointing out environmental

³⁵² CCRC, Concluding Observation: Namibia, cited above at 284, para.7

³⁵³ CCRC, Concluding Observation: Seychelles, 58th session, 23 January 2012, CRC/C/SYC/2-4, para.7

³⁵⁴ *Id.*, para.20

³⁵⁵ CCRC, Concluding Observation: Nigeria, 54th session, 21 January 2010, CRC/C, NGA/CO/3-4, paras.46-47

³⁵⁶ CCRC, Concluding Observation: Ecuador (on the 1st periodic report), 26 October 1998, CRC/C/15/Add.93, para.9; and CCRC, Concluding Observation: Ecuador (on the 2nd and 3rd periodic report), cited above at note 285, para.9

³⁵⁷ See for instance, CCRC, Concluding Observation: Cambodia, 57th session, 3 August 2011, CRC/C/KHM/2-3, para.32; CCRC, Concluding Observation: Guatemala, 55th session, 25 October 2010, CRC/C/GTM/CO/3-4, para.10; CCRC, Concluding Observation: Mozambique, 52nd session, 4 November 2009, CRC/C/MOZ/CO/2, para.6; CCRC, Concluding Observation: Bangladesh, 55th session, 26 June 2009, CRC/C/BGD/CO/4, para.7; CCRC, Concluding Observation: Pakistan, 52nd session, 15 October 2009, CRC/C/PAK/CO/3-4, para.5; CCRC, Concluding Observation: Malaysia, 54th session, 25 June 2007, CRC/C/MYS/CO/1, para.10; CCRC, Concluding Observation: Kiribati, 54th

health, the CCRC has spoken its concern at environmental problems, such as air and water pollution and environmental degradation which have serious consequences for children's health and development.³⁵⁸ However, in spite of general reference to environmental degradation, overview of these concluding observations imply the emphasis the CCCR paid to local situations and their implications thereof, rather than appraising the interface the problems have with global environmental or climatological condition.

Finally, the CCRC has uttered its concerns on environmental degradation and pollution and its negative effects on child rights when it looked in to State reports concerning regulation of the activities of business sector. The CCRC has put forward that States parties need to develop a framework regulating the operation (both national and international) of business corporations to undertake their activities in environmentally responsible way, specifically taking in to account the impact of such activities on child rights.³⁵⁹ It has further recommended States parties to provide for appropriate mechanisms to address cases of non-compliance (nationally and abroad) by corporations of their human rights responsibility, including environmental issues.³⁶⁰

The descriptions above indicate that the CCRC has taken on, though tenuously, the task of expressing its viewpoint on environmental degradation in general and climate change in particular. However, apart from the general concerns about the problems and some instances of recommendations, it has not attempted to establish the relationship among the problems childrens are suffering from in a certain State due to environmental debacles and factor which

session, 29 September 2006, CRC/C/KR/CO/1, para.4; and CCRC, Concluding Observation: Ecuador (2nd and 3rd periodic report), cited above at note 285, para.9 and (on the 1st periodic report), cited above at note 357, para.24

³⁵⁸ CCRC, Concluding Observation: The Philippines, 52nd session, 22 October 2009, CRC/C/PHL/CO/3-4, paras.59-60; CCRC, Concluding Observation: Ecuador (on the 2nd and 3rd periodic report), cited above at note 285, paras.53 and 54; and CCRC, Concluding Observation: South Africa, cited above at note 285, para.30

³⁵⁹ CCRC, Concluding Observation: Thailand, 59th session, 17 February 2012, CRC/C/THAI/CO/3-4, paras.29-30; CCRC, Concluding Observation: Republic of Korea, 58th session, 2 February 2012, CRC/C/KOR/CO/3-4, paras.26-27; CCRC, Concluding Observation: Seychelles, cited above at note 354, paras.20-21; CCRC, Concluding Observation: Japan, 54th session, 20 June 2010, CRC/C/JPN/CO/3, paras.27-28; CCRC, Concluding Observation: Nigeria, cited above at note 356, paras.46-47; CCRC, Concluding Observation: Ecuador, 2 March 2010, CRC/C/ECU/CO/4, paras.30-31; CCRC, Concluding Observation: Guatemala, cited above at note 358, paras.34-35; CCRC, Concluding Observation: Angola, 55th session, 19 October 2010, CRC/C/AGO/CO/2-4, paras.24-25; and CCRC, Concluding Observation: Sri Lanka, 55th session, 19 October 2010, CRC/C/KA/CO/3-4, paras.18-19

³⁶⁰ CCRC, Concluding Observation: Bahrain, 55th session, 3 August 2011, CRC/C/BHR/CO/2-3, paras.20-21; CCRC, Concluding Observation: Costa Rica, 57th session, 3 August 2011, CRC/C/CRI/CO/4, para.25-26; and CCRC, Concluding Observation: Argentina, 54th session, 21 June 2010, CRC/C/ARG/CO/3-4, paras.29-30

will bring about these problems - which will eventually trace their cause to climatological conditions.³⁶¹

Furthermore, the dearth of more focused and analytical consideration of States reports informed by the implementation of the rights recognized under the CRC in relation to climate change is another problem worth consideration. For instance, among the clusters of rights structured by the CCRC under the Reporting Guidelines, relevant and updated information regarding environment is not included. Rather, States parties include such information, may be discretionarily. However, such reports are most often confined to highlighting on general environmental conditions or, in some cases, to measures taken regarding environmental pollution in general or arising from specific incidents.³⁶²

On the other hand, on those meager occasions where the CCRC has stated climate change as the potential impeding factor for the enjoyment by children of their human rights, it has done so not based on information obtained from the State party or other sources. Nor does the subject matter pointed out in the list of issues on which State parties are requested to submit additional updated information or in the constructive dialogue between the CCRC and the reporting State.³⁶³

³⁶¹ For instance, in its concluding observations on Nigeria and Ecuador, the CCRC raised (with no explanation) the negative effects on children of global climate change; and later, it expresses its utmost concern at the rate of malnutrition, incidences of child diseases, high rate of infant, child and maternal mortality, draught and poverty in the stated countries. But, there is no logical correlation it has established among the facts further than recognizing climate change as a threat. In the case of Seychelles, the concluding observation do not even contain any state of condition children are in the State and to which climate change can be traced as a major obstacle impacting the enjoyment by children of their rights. CCRC, Concluding Observation: Nigeria, cited above at note 356, paras.46-47 and 59; CCRC, Concluding Observation: Ecuador (on the 1st periodic report), cited above at note 357, para.24; and CCRC, Concluding Observation: Seychelles, cited above at note 354

³⁶² For instance, the 2009 Philippines report points at air and water pollution as a major problem in some of the urban centers of the country and makes only a remote reference to El Nino phenomenon, destruction of denuded forests and the increasing volume of air pollutants released from industrial activity and large number of vehicles as a cause to the problem. The CCRC echoed what the State has mentioned without further explorations to the points. Similarly, in its 2011 report to the CCRC, Seychelles stated general environmental conditions and some of the positive measures taken to conserve the natural environment. Though the CCRC has stated in its concluding observation that climate change is a major obstacle negatively impacting the enjoyment of the rights of the child in Seychelles, it do not establish the interaction between its assertions and the facts on the ground as stated by the country. See CCRC, “Combined Third and Fourth Periodic Reports of Philippines”, 20 March 2009, CRC/C/PHL/3-4, paras.174-179; CCRC, Concluding Observation: The Philippines, cited above at note 359; CCRC, Concluding Observation: Seychelles, cited above at note 354, para.7; and CCRC, “Combined Third and Fourth Periodic Reports of Seychelles”, 27 April 2011, CRC/C/SYC/2-4, paras.317-331

³⁶³ CCRC, “Combined Third and Fourth Periodic Reports of Seychelles”, cited above; CCRC, “List of issues concerning additional and updated information related to the combined second, third and fourth periodic reports of Seychelles, 13 July 2011, CRC/C/SYC//Q/2-4; CCRC, “Written replies by the Government of Seychelles to the list of issues related to the consideration of the combined second, third and fourth periodic reports of the Seychelles”, 14 September 2011, CRC/C/SYC/2-4; and CCRC, “Summary record on the Combined second to fourth periodic reports

Instead, the CCRC all of a sudden (i.e., without any indication as to the sources for its concern) put forward the negative effects of climate change as a major obstacle to the enjoyment of child rights.

The point is that, unless State parties are required to provide relevant and updated inclusive information in respect to environmental issues and/or specifically on climate change, including policies, programmes, and factors or difficulties encountered; or the CCRC regularly and consistently seek for such information from different sources and make a defined and continuous appraisal, the potential that incidental and irregular evaluation will bear fruit is far-fetched. Apparently, the irregularity arises due to the lack of a simplified and climate change focused reporting and States report evaluation procedure established by the CCRC.

The CCRC can resolve this in subsequent concluding observations by adopting a more focused, methodical, all-inclusive and continuous analysis of country situations; including policy and legal frameworks and thereby adopting recommendations to this effect. The Committee can do this either using the already set cluster of child rights under the general guidelines for States reports and which are substantially related to the rights impacted by climate change³⁶⁴; or based on its authority to ask for additional and updated information, the CCRC can require States to provide comprehensive and specific information as regards the impact of climate change on the rights of the child.³⁶⁵ In addition, as the subsequent section will point out, the CCRC can adopt a

of Seychelles on the implementation of the Convention on the Rights of the Child”, 6 June 2012, CRC/C/SR.1655. see also the CCRC, “Third and fourth periodic report of Nigeria”, 5 January 2009, CRC/C/NGA/3-4; CCRC, “List of issues related to the consideration of the third and fourth periodic reports of Nigeria”, 2 March 2010, CRC/C/NGA/Q/3-4; CCRC, “Written replies by the Government of Nigeria to the list of issues related to the consideration of the third periodic report of Nigeria”, 28 May 2010, CRC/C/NGA/Q/3-4/Add.1; and CCRC, “Summary record on the Third and fourth periodic reports of Nigeria on the implementation of the Convention on the Rights of the Child”, 29 September 2010, CRC /C/SR.1505

³⁶⁴ See section 4.3.3.1 above

³⁶⁵ For instance, though it is not provided explicitly under the CRC reporting guidelines, States parties have an obligation to provide information on the comprehensive measures adopted regarding the impact of business activities on the rights of the child. accordingly, the CCRC (based on the Human Rights Council Resolution 8/7 of 2008) taken on focused and continuous assessment of State’s legislative, administrative and compliance frameworks regulating the relationship between business and child (see note 360 above). The concerns of the CCRC on business and child rights in a number of concluding observations suggest the instrumentality of concluding observations to draw the attention of States parties to new areas of concern. By analogy, the CCRC can follow similar trends regarding the issue of climate change until such time that it incorporates a specific requirement under the reporting guidelines or provide the same in a general comment.

separate general comment on the matter so that States provide comprehensive information accordingly.³⁶⁶

Consequently, a critical and continuous review of States reports vis-à-vis the impacts of climate change on the rights of the child in a State party or on its contribution to the problem has to be put in to effect to advance concerns to the subject matter both nationally and at the international level. This has an added value of minimizing the indifference of States regarding the follow-up of the CCRC to the point. The process can also be used to commend positive aspects or to articulate areas where a State or the international community at large has obligation to take further steps in order to manage the cause or effect of climate change problems.

Ordinarily, concluding observations evaluate State progress, provide valuable insight into the implementation of strategies, and help to hold State parties accountable for their activities as it affects human rights. In the context of climate change as well, it is possible to assess the state of national policies, programmes and measures considerably related to climate change; and identify positive developments that have taken place or highlight (by way of suggestion or recommendations) areas that require a special follow-up. As concluding observations will not easily be ignored³⁶⁷, the suggestions and recommendations are likely to serve as a basis of action by the States parties, NGO's, other UN human rights treaty bodies and intergovernmental organs. They can also help to ensure effective follow-up in subsequent State reports.

Though the major functions of the CCRC is to monitor compliance by States parties with their obligations set under the CRC, such functions does also have an international dimension. The CCRC used to reflect on international mechanisms of monitoring progress on implementation of the CRC via calls for international cooperation and assistance³⁶⁸ in different areas of international concern and ratification of different international instruments by States parties. It

³⁶⁶ According to the CCRC General Guidelines Regarding the Form and Content of Reporting, State reports are expected to contain additional information specific to the implementation of the CRC taking in to account relevant general comments of the CCRC. Such information has to analyse how laws, institutional framework, policies and programmes impact on child rights. On the other hand, based on such information and others the CCRC can get from different sources, it can undertake a close and rigorous analytical investigation and make appropriate recommendations on climate change situations in a specific country and its international dimensions thereof. CCRC General Guidelines Regarding the Form and Content of Reporting, cited above at note 346

³⁶⁷ Verheyde and G. Goedertier, cited above at note 352, p.30

³⁶⁸ The legal basis for the CCRC to promote international cooperation in the fields covered by the CRC are provided under the preamble, para.1 and 2, Articles 2, 4, 24(4), 28(3) and 45 of the CRC; see also CCRC, General Comment No.5, cited above at note 146, paras.60-64; and Rule 78 of CCRC Rules of Procedure, cited above at note 348

can also draw the attention of State parties, UN bodies, and other relevant international bodies, organizations and agencies to extend their cooperation and assistance to efforts to ensure the rights of the child in different contexts. It can make use of this possibility to pressure States parties to live up to internationally agreed targets - including targets under the UNFCCC and other commitments under international environmental law, upholding human rights commitments included in the documents. This also creates an opportunity to urge concerned States to provide development and technical assistance for adaptation and mitigation measures concerning the negative impacts of climate change on rights of the child.

Besides, as part of its consideration of States parties' report, and in the light of the principle of indivisibility and interdependence of human rights, the CCRC consistently urges States parties, if they have not already done so, to ratify international human rights instruments. It could also encourage them to consider ratifying other relevant international instruments, including instruments on environment and/or climate change and commend adherence to them so far as it contributes to ensuring the fullest possible respect to the CRC.³⁶⁹

4.3.2.3 Challenges

Though the State reports/concluding observations procedure will significantly contribute to the discourse on human rights based approach to climate change and articulate the obligations of States party vis-à-vis the impacts of climate change on the rights of the child, the process has challenges which will potentially hold back its effectiveness. The first one is the periodicity of reporting procedure (i.e., the five year period between State's reports) in the light of the urgency of climate change problems. It would, of course, have been commendable had the reports were to be submitted in a lesser period so that the procedure will have a strong influence on the position of children in general.³⁷⁰ However, in view of the higher rate of non-compliance of States parties to the reporting obligations even within the allegedly extended reporting time; the rise in the reporting and implementation obligations of States under the core international human rights treaties challenging the capacity of States parties; and the backlog of States parties' reports

³⁶⁹ CCRC, General Comment No.5, cited above at note 146, para.17

³⁷⁰ The five year Periodicity of reports was one of the issues hotly debated during the making of Article 44 of the CRC. Some States and international organizations had recommended four year and two year, respectively, for the process to be sufficient safeguard for an effective implementation of the CRC. See OHCHR, "Legislative History of the Convention on the Rights of the Child", cited above at note 144, pp.815-821

awaiting consideration before the UN human rights treaty bodies, the period will not appear that much unreasonable hitherto.

In the context of human rights based approach to climate change as well, the emphasis is not exclusively and directly on monitoring the greenhouse gas emission level of State(s) in a given period. Rather concluding observations and other systems are meant to create deeper understanding of the adverse conditions climate change causes to child rights, instilling child rights based approach in to the climate change mitigation and adaptation efforts and, on the basis of these, establishing human rights responsibility and accountability of States for damages ensued or to take measures in advance. Additionally, taking in to account the nature and purpose of State reports/concluding observations (i.e., they are meant to underlie issue that require a special follow up – based on constructive dialogue with the State party concerned, and not through convictions and penalties imposed), it appear that the five year period is not a major concern. The major concern, rather, is to ensure the effective implementation of the recommendations and observations the CCRC urged the State(s) to consider.

Though the CCRC has not so far adopted a formal procedure to follow-up the implementation of its suggestions and recommendations in concluding observations, there are engagements yet in a less formal way.³⁷¹ Unlike the CCRC, four treaty bodies (i.e., Committees on CAT, CERD, CEDAW and HRC) have adopted formal procedures for follow-up where States parties report back to the country or follow-up rapporteur/coordinator within a fixed time period on the measures they took in response to specific recommendations or a special concern. The special rapporteur/coordinator may request further information if it is not satisfied by what has been provided and undertake assessment accordingly. This procedure, which can be taken as part of the reporting obligations of States parties³⁷², enable the treaty bodies to monitor measures taken

³⁷¹ According to Rule 75 of the CCRC's Rules of Procedures, the CCRC has the competence to indicate the time within which the State parties comment on the suggestions and general recommendations it has adopted on a State party's report. Based on these comments and generally, the suggestions and recommendations in concluding observations, workshops were organized (from 2003 onwards) in coordination with the OHCHR, host governments and other international organizations to assess the implementation of the concluding observations of the CCRC targeting groups of States parties at sub-regional level. However, the focus of these workshops were not assessing compliance to observations in concluding observations or progress exhibited in a State(s) party. Rather, the groups discuss generally on selected thematic issues and ways of furthering the implementation of and follow-up to the CCRC's concluding observations. CCRC, Rules of Procedures, cited above at note 348; and CCRC, Follow-up to Concluding Observations, (<http://www2.ohchr.org/english/bodies/crc>), last visited on July 09, 2012

³⁷² In the context of the CRC, Article 44 of the CRC authorized the CCRC to request from States parties further information relevant to the implementation of the Convention. Rule 73 of the CCRC's Rules of Procedure broadly

by States in respect of concerns selected for their urgency and thereby extend leverage of States reporting process to influence State parties to progress on principal issues of concern. In view of this, the CCRC has to take further steps to make its observations more effective. So, it has to formalize the follow-up procedures and thereby change the process into a continuum of monitoring to ensure effective implementation of its observations.

Another challenge is the one related with USA. USA is not party to the CRC and have no obligation to submit reports or consider concerns raised in general comments of the CCRC as regards the CRC.³⁷³ On the other hand, as it is one of the world's top emitter of greenhouse gases³⁷⁴, it has an obligation to take the lead in efforts to combat climate change. Contrarily, USA has been rebuffing offers made to reach an international accord and has been taking actions that threatens to nullify international effort to combat global warming.³⁷⁵ This stiff position of USA together with the belief of the rest of the world that USA has to take the lead, constitute major setbacks in international environmental negotiations. Where the same concerns are transposed to the CCRC's processes, it could be a tangible impeding factor. The possible approach the CCRC can pursue in this respect is to increase coordination with other UN human rights treaty bodies to establish a comprehensive and effective international monitoring - in the interest of protecting and promoting human rights universally.³⁷⁶

interpret the provision as including request for additional reports. If the CCRC has the competence to ask a State at any time to draw up a report relating to the implementation of a specific provision of the CRC or to provide additional information, it follows that, the follow-up procedure can be considered as part of the obligation to report.

³⁷³ Though USA has signed the CRC on 16 February 1995, it has not yet ratified or accepted the Convention. However, the Country is party to the first two optional protocols to the CRC, i.e., Optional Protocol on the Involvement of Children in Armed Conflict; and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Though the obligation to provide international assistance and cooperation is common requirement under the two Protocols, their specific and limited application only in the context of the issues, makes it difficult to transpose to the context of climate change impact on the rights of the child.

³⁷⁴ According to the 2012 global CO2 emission trends report, the world top five emitters are China (29%), the United States (16%), the European Union (11%), India (6%) and the Russian Federation (5%) closely followed by Japan (4%). But, when calculated in terms of per capita emissions, United States take the lead with 17.3 tons per person; whereas, Australia has an average per capita emission of 16 tons, European Union 7.5 tons, China 7.2 tons and India 1.6 tons. See Netherlands Environmental Assessment Agency and European Commission, Trends in Global CO2 Emissions: 2012 Report, (2012), (<http://www.pbl.nl/en/or-edgar.jrc.ec.europa.eu>), last visited on November 30, 2012

³⁷⁵ P. Kevin, "From Kyoto to ANWR: Critiquing the Bush Administration's withdrawal from the Kyoto Protocol to the Framework convention on Climate Change", Journal of Transnational Law and Contemporary Problems, vol.13, (2003), p.749-770

³⁷⁶ Though the main concern of the CCRC is on the impact of climate change on the rights of the child, its emphasis on the legitimacy of human rights based approach to climate change has the potential to align other UN human rights treaty bodies and facilitate their engagement in a coordinated approach to foster comprehensive understanding

4.3.3 General Comments

Most of the treaty bodies under the UN human rights system have the competence to publish its interpretations of the provisions of the treaty it monitors in the form of General Comments or Recommendations.³⁷⁷ General Comments or Recommendations provide significant, comprehensive analysis and comments on a wide range of subjects related with the content and meaning of the rights and obligations of States parties enunciated in the respective treaties. Though the comments are not legally binding, they represent an authoritative interpretation of the respective Covenants and more often, serve as a tool to clarify or elaborate controversies or indistinct construction of treaty provisions and the resultant implementation gaps. Since they deal with wide ranging subject matters related with specific treaty provision(s) or thematic area, it is widely assumed that such comments provide guidance on how States are expected to act and what purposes and objectives they need to achieve.

There are instances where general comments contributed to the development of distinct legal regimes by drawing the attention of States to insufficiencies or controversies in existing treaties. There also exist cases where such comments fundamentally changed the practical application of treaty provisions and corresponding States behavior thereof.

In the first set, one can take as a typical example the discernible pattern of improvement to the extent of adoption of a distinct convention which the adoption of General Comment No.5 (in 1995) by the CESCR has brought concerning the rights of persons with disabilities. Though it was not the exclusive factor, as Quinn and Degener stated in their study, the adoption of the General Comment and how the CESCR was responding in its concluding observations thereafter has contributed significantly to paving the way for a human rights based approach underpinning the CRPD and pointed to the significance of a separate convention.³⁷⁸

of the problem, articulate human rights obligations of States parties to the respective treaties and ensure effective follow-up to the observations and recommendations of the treaty bodies. When one considers an increasing call by the UN human rights treaty bodies to collaborate with each other in order to be aware of what each treaty body had said and ensure consistency in their recommendations, it is not difficult to envision the effect the considerations of the CCRC will have on other treaty bodies.

³⁷⁷ Among the nine UN human rights treaty bodies, the Human Rights Committee, CESCR, Committee on CAT, CCRC and Committee on Migrant Workers (CMW) issue General Comments while the Committee's on CERD and CEDAW adopt General Recommendations. The Committees on Enforced Disappearance and on the Rights of Persons with Disabilities have not yet adopted either General Comments or General Recommendations.

³⁷⁸ G. Quinn and T. Degener, "Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability" (2002), HR/PUB/02/1, pp. 79-132. In General

In the second set, various instances exist where the consolidated interpretations of treaty provisions or analysis of thematic issues based on the text and accumulated information of treaty bodies have articulated and/or configured the scope of protection under a specific provision or the covenant at large. One of these is General Comment No.3 of the ICESCR wherein the CESCR denounced the allusion to the text of Article 2 of the ICESCR as expressing State obligations and not individual rights and therefore economic, social and cultural rights are non-justiciable. The CESCR asserted that, under the stated article, judicial remedies is one sort of “appropriate remedies” envisaged under the ICESCR and listed a number of the Covenant provisions which are capable of immediate application by judicial organs in many national legal systems.³⁷⁹ This assertion of the CESCR acclaimed as the strongest statement from UN treaty body about the need for States to transform their international obligations in to effective remedies.³⁸⁰ The influence even moved beyond national level and triggered the adoption of an optional protocol to the ICESCR enabling the CESCR to entertain complaints of violations of the Covenant rights.

The other contribution of the CESCR worth mentioning is its interpretation under General Comment No.1 regarding the territorial scope of application of the ICESCR. Though the ICESCR lack specific provision providing for its territorial scope of application, the CESCR has asserted extraterritorial application of the Covenant based on Article 2 and 14 of the Covenant.³⁸¹ As pointed out previously, though the issue is not yet settled conclusively, the interpretation triggered international reaction to the point among international tribunals³⁸² and scholars.³⁸³

Comment No. 5, the CESCR has explicitly stated that, “...human rights of persons with disabilities must be protected and promoted through *general, as well as specifically designed laws, policies and programmes.*” In addition, though adopted at the latter stage, General Comment No.9 of the CCRC, dealing with the rights of children with disabilities, has also noted with appreciation the work of the Ad-Hoc Committee on a Comprehensive and Integral International Convention on the Protection and promotion of the Rights and Dignity of Persons with Disabilities. One can also trace a rudimentary relationship between the CRC and the HRC’s General Comment No.17 - on the Rights of the Child - which a little predates the CRC. Though ICCPR has a provision solely dedicated to children and other provisions which directly or indirectly apply to children, the HRC emphasized the need for special measures and protections responsive to the special nature of children; See CESCR General Comment No.5: Persons with Disabilities, HRI/GEN/1/Rev.9 (Vol. I), para.6 (emphasis added); CCRC, General Comment No.9: The Rights of Children with Disabilities, CRC/C/GC/9, 27 February 2007, para.2; and HRC, General Comment No.17: Article 24 (Rights of the Child), HRI/GEN/1/Rev.9 (Vol. I), p.193

³⁷⁹ CESCR General Comment No.3: The Nature of States Parties’ Obligations (Art.2, para.1, of the Covenant), HRI/GEN/1/Rev.9 (Vol. I), para.5

³⁸⁰ M. Ssenyojo, “Economic, Social and Cultural Right in International Law”, (2009), pp.149-202

³⁸¹ CESCR General Comment No.1, cited above at note 304, para.3

³⁸² ICJ, cited above at note 305

Outside the jurisprudence of the CESCR, other notable instances include: HRC's General Comment No.6 on the right to life which integrated enforced disappearance of individuals as a violation of the protection against arbitrary deprivation of life³⁸⁴; and General No.14 where the HRC has denounced the development and proliferation of increasingly awesome weapon of mass destruction, specifically the designing, testing, manufacture, possession and deployment of nuclear weapons as a threat to the right to life and to the general promotion of universal respect for and observance of human rights and fundamental freedoms.³⁸⁵

The CCRC's General Comment No.3 on the impact of HIV/AIDS epidemic on the right of the child is another prominent instance. Here, the CCRC having recognized the drastic impact of HIV/AIDS on the overall rights of childrens at all stages, urged States parties to understand human rights of children in the context of HIV/AIDS and to promote the realization of the same by identifying and taking appropriate measures which support children infected, halt the spread of the disease and mitigate the impact.³⁸⁶ As the CCRC stated, the rationale behind the adoption of the General Comment was the grave threat HIV/AIDS pose to the realization of children's rights - making holistic child rights based approach necessary.³⁸⁷

Generally, the brief overview of just few of the general comments above indicates the potential that such comments have. Directly or indirectly, they impact on specific human rights conditions and increase the sensitivity of States to weight situations and their conduct in the light of its effect. With this backdrop, let us now move on to the consideration of what is expected of the CCRC concerning the severe impact of climate change on the rights of the child.

The CCRC has so far made hardly any attempt to consider the effect of climate change on the rights of the child. This is not, of course, surprising given the fact that only after 2009 OHCHR report that the relationship between climate change and human rights has been recognized

³⁸³ See notes cited above at 293

³⁸⁴ HRC, General Comment No.6, cited above at note 122, para.4

³⁸⁵ HRC, General Comment No.14: Article 6 (The Right to Life), HRI/GEN/1/Rev.9 (Vol. I)

³⁸⁶ CCRC, General Comment No.3: HIV/AIDS and the Rights of the Child, CRC/GC/2003/3, para.4. It is based on the requirement under this General Comment that the CCRC has subsequently been able to devote significant and increased attention to HIV/Aids in its examination of State reports.

³⁸⁷ *Id.*, paras.2 and 5; another general comment of CCRC worth mentioning is General Comment No. 11 - on indigenous children and their rights under the CRC. The CCRC pointed to the immense challenges indigenous children are facing in exercising their rights notwithstanding the CRC's relatively better reference to their rights. It is important to sharpen the focus of States on the rights of indigenous children and the corollary duties of States with respect to the difficulties such children face. The CCRC, General Comment No.11, cited above at note 14

officially at the UN; only three general comments of the CCRC are adopted after the OHCHR's report.³⁸⁸ Though the latest (specifically, General Comment No.11 and 12) as well as the previously adopted general comments are relevant in the context of climate change, there was no detailed reference to the point, except some negligible references to natural environment.³⁸⁹

The point is that, based on available empirical evidences (as presented under chapter three); technically, with the help of the comprehensive and diverse scientific studies made by the IPCC³⁹⁰; and taking in to account the basic principles and standards laid down under international environmental law, the CCRC can determine scientific and legal questions involved in climate change and child rights. Consequently, the CCRC can consider adopting general comment on climate change and make out the alarming threat that climate change has been posing on the rights of the child.³⁹¹

The general comment has: to articulate the basic rights of the child that have been violated or threatened; outline the nature and extent of States parties obligations; state the legal and factual grounds which require a State(s) party to take appropriate measures;; point to the remedies available for violations; provide guideline for monitoring compliance with obligations under the CRC. These contribute to the formulation of comprehensive and integral international system of regulating the matter by showing the relevance of rights contained in the CRC to climate change mitigation and adaptation efforts. Equally, it is essential to depict how current State activities and

³⁸⁸ CCRC, General Comment No.11, cited above at note 14; CCRC, General Comment No.12, cited above at note 17; and General Comment No.13: The Right of the Child to Freedom from all forms of Violence, CRC/C/GC/12

³⁸⁹ For instance, under General Comment No.1, the CCRC emphasized the need for education to be designed and provided in such a way that promotes development of respect for the natural environment. Similarly, under General Comment No.11, the CCRC urged States parties to consider the "quality of natural environment" to ensuring the indigenous children's right to life, survival, development and proper health-care. Finally, the CCRC held a day of general discussion in 2008 on the right to education of children in emergency situations where it has stressed that education of children's is disrupted by long term humanitarian crises caused by armed conflicts and all types of natural disasters. Possibly, the latter situation will include the impact and consequences of climate change. see CCRC, General Comment No.1, cited above at note 247, paras.9 and 13; CCRC, General Comment No.11, cited above at note 14, paras.35 and 53; and CCRC, "Day of General Discussion on The Rights of the Child to Education in Emergency Situations", (Recommendations), 49th Session, 19 September 2008

³⁹⁰ As per Article 45 of the CRC and the Rules of Procedure adopted by the CCRC, the CCRC has the competence to invite competent UN bodies to provide expert advice on the implementation of the CRC in areas falling within their respective mandates or to submit studies on topics of relevance to the CCRC. see CCRC, "Overview of the Reporting Procedures", cited above at 348, paras.10 and 11; and CCRC, Rules of Procedure, cited above at note 348, Rule 74

³⁹¹ As provided under Rules of Procedure, the CCRC may prepare general comments based on the articles and provision of the CRC with a view to promote its further implementation and assisting states parties in fulfilling their reporting obligations. Rule 77 of the CCRC Rules of Procedure, cited above at note 348

reluctance to restrain the adverse effects of climate change are compromising the future health, development and general well being of the child.

The determination of the nature (i.e., general and specific measures States are required to adopt and implement) and the extent of the obligations may involve certain level of intricacy. Apparently, it is implausible to expect at this stage that the CCRC will outline the level of emissions of greenhouse gases which State parties have to abide by or the time line with in which such obligation has to be carried out. Such function is beyond its power and mandate. Rather, based on the relevant provisions of the Convention, the CCRC can examine the normative content(s) of the rights vis-à-vis climate change and the corollary general and specific obligations of States parties. For instance, it can establish minimum core obligations State parties are bound to comply with together with the methods of compliance and/or set standards or principles which would help to decide when and how the activities of States parties are infringing on human rights.

Furthermore, based on its authority under Article 45 of the CRC, the CCRC has the competence to request the Secretary-General, through the UN General Assembly, to undertake studies on topics of relevance to the rights of the child.³⁹² Similarly, it may invite UN organs, specialized agencies and other competent bodies as it may consider appropriate to provide it with expert advice or submit reports on the implementation of the CRC in areas falling within the scope of their activities.³⁹³ This gives the impression that, though the CCRC is not directly in a position to set or request national greenhouse gas emission level catalogue by a State(s) in question, it can either have the expertise advice and reports of the above stated UN or other organs, or take in to account the reports of States with regard to their respective levels of emission reduction obligations under the UNFCCC. Therefore, setting the frameworks concerning the core obligations of States parties, the general comment can point to the steps States parties are required to take, which will at the end of the day serve as a guideline to monitor compliance of States parties to their obligations.

Finally, when the normative contents of the rights implicated by climate change are identified and consequent obligations of States are established, ‘a dynamic process is set in motion which

³⁹² Article 45(c) of the CRC and Rule 74 and 80 of the Rules of Procedure, cited above at note 348

³⁹³ Ibid

facilitates identification of violations.’³⁹⁴ Violations in turn call for remedies. In effect, the remedies are founded up on the proper implementation of obligations and are determinable on a case by case basis. However, in the context of climate change, emphasis has to always be paid for the fact that the causes and effects of the problem are defused. This entails the CCRC to draw attention to measures which shall be undertaken both by individual State and internationally - through international assistance and cooperation. Differently, international obligations will be complied with by formulating and adopting comprehensive and basic legally binding agreement which commit countries to reduce their emissions or take other mitigation and/or adaptation measures. In this effort, it is also important that the CCRC emphasize the need to ensure that strategies are so designed taking fully in to account the rights of the child and the potential relevance of the CRC and other human rights treaties in the works on climate change.

3.4.3 The Communications Procedures

Individual or inter-State communications procedure is one of the directions the international human rights system has developed for monitoring implementation and enforcement of human rights. Though the CRC, unlike many other core international human rights treaties, was short of complaint mechanisms, the adoption by the UN General Assembly of a new (OPCP will now empower children to lodge complaint to the CCRC for violation of their rights under the CRC and the first two Optional Protocols.³⁹⁵ As the UN High Commissioner for Human Rights, Navi Pillay, put forward “[c]hildren will now be able to join the ranks of other rights-holders who are empowered to bring their complaints about human rights violations before an international body.”³⁹⁶

The OPCP establishes two communications procedures, i.e., individual and inter-State communications procedures, under which complaints will be brought before the CCRC; and a

³⁹⁴ This is an expression the CESCR most often use conveying the message that, establishing cases of violation of rights inherently emanate from identifying the content(s) of rights and the general or core obligations States are bound to observe. See for instance, CESCR General Comment No.14, cited above at note 386, para.46 and CESCR, General Comment No.15: The Right to Water (Arts. 11 and 12 of ICESCR), HRI/GEN/1/Rev.9 (Vol. I), para.39

³⁹⁵ “Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography”, General Assembly resolution 54/263 of 25 May 2000; and “Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict”, General Assembly Resolution 54/263 of 25 May 2000

³⁹⁶ OHCHR, Children Empowered to Complain about Rights Violations Under new UN Optional Protocol, Geneva, 20 December 2011, (<http://www.ohchr.org>), last visited August 15, 2012

third, inquiry procedure, under which the CCRC can initiate investigations into allegations of grave or systematic violations of the CRC or its Optional Protocols. These procedures are generally expected to further the monitoring of the implementation of child rights. There are, however, limitations which will potentially challenge the strength of the procedures. The subsequent sub-sections look into the two communications procedures (individual and inter-State); the processes involved, the opportunities they create to redress climate change related complaints and the challenges the limitations present are considered.

4.3.4.1 Individual Communications

The OPCP states that, the CCRC has the competence to receive and consider communications from individuals or group of individuals who are “within the jurisdiction of a State party [and] claiming to be victims of a violation by that State party of any of the rights set forth in [the CRC or its Optional Protocols]”.³⁹⁷ Accordingly, the first requirement the complainant(s) has to demonstrate is that he/she/they are the ‘victims or acting on behalf of the victims (with their consent, unless the author can justify acting on his/her/their behalf without such consent)’.³⁹⁸ An individual(s) may have to show that he/she has been directly and concretely affected by the alleged violation. In the context of climate change as well, this means that the claimant(s) must demonstrate that the law, policy, act or omission of the State party which caused climate change effects complained of has directly (personally) and concretely (tangibly) violated his rights recognized under the CRC. As the jurisprudence in other treaty bodies inform, it will not be sufficient to dispute the State’s law, policy or practice in abstract without indicating how the complainant(s) has been affected.³⁹⁹

However, as presented under chapter two⁴⁰⁰, despite the fact that climate change is the cause for unprecedented events which put the rights of the child at stake, present trends in climate change are not necessarily the results of the current activities of a State(s). It is the result of the accumulation of greenhouse gases in the atmosphere. Of course, the extra-emissions of States now have to be restrained in order to hold back similar or far-reaching future effects.

³⁹⁷ Article 5 of the OPCP

³⁹⁸ Ibid

³⁹⁹ M. Sepulveda, T. Van Banning, *et al.*, “Universal and Regional Human Rights Protection: Cases and Commentaries”, (2004), p.4; and A. Conte, “Procedure under the Optional Protocol”, in A. Conte and R. Burchil, (ed.), “Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee”, (2nd ed. 2009), p.25

⁴⁰⁰ See Chapter two, section 2.3.3

Accordingly, the immediate and pressing objective (both in environmental law and human rights based approach) is to adapt to the current trends and curtail future devastating effects.⁴⁰¹

Regarding current emissions trend, it is possible to find out both violation of obligations by State party and the victim(s) – as the OPCP require. But, in respect to future impending effects, it appears that there are only latent victim(s) whose rights are at stake due to the violations by State party of its obligations now. In view of this, it appears that unless the CCRC broadly interpret the requirement of victimhood under Article 5 of the OPCP to make it comprehensive and inclusive of future imminent harms, there is no way that States will be held accountable for their present violations. Thus, where there is present violation of obligations by the State party and foreseeable consequence, the fact that the consequences will not ensue until a certain period of time shall not rule out victimhood. Unless, as De Schutter expressed, it gives an impression that, in order to possess the required standing, the complainants have to make serious sacrifices and accept, at least temporarily, a violation of their rights before they are entitled to lodge complaints.⁴⁰²

The OPCP establish which State party may be the subject of an individual communications procedure. Accordingly, the CCRC has the competence to receive individual complaint(s) from victims who are/were ‘within the jurisdiction’ of a State party and for violation by ‘that State party’ of any of their rights.⁴⁰³ Since the language used (i.e., within the jurisdiction) is the same as the one used under other core international human rights instruments (including the CRC) in defining their respective spatial scope of application⁴⁰⁴, it will be broadly interpreted to incorporate subjects outside territorial boundary – so as to ensure them the right to bring complaints against any delinquent State(s). This will not however be the case at least for two

⁴⁰¹ R. James, “Climate Change and Armed Conflict: Hot and Cold Wars”, (2009), p.2

⁴⁰² O. De Schutter, cited above at note 314, p.814. The HRC, however, hold a firm reverse position to this assertion. For instance, in a case *Aumeeruddy-Cziffra and 19 other Mauritanian women v Mauritius*, the HRC indicated that it will admit communications in which an alleged victim’s risk of being affected by a potential breach is ‘more than a theoretical possibility’. In the instant case, 20 women from Mauritius, among whom three were married, brought class action before the HRC challenging the enactment of the Immigration (Amendment) Act, 1977 and the Deportation (Amendment) Act, 1977 by Mauritius –alleging that the acts discriminate between Mauritanian women and men married to foreigners. The HRC reasoned that, in respect of the 17 unmarried co-authors there is no question of actual interference as they are not yet married to foreigners. So, for the HRC, if a law or practice claimed to be contrary to the Covenant has not already been concretely applied to the detriment of that individual, there is only theoretical possibility of application, and that does not entitle victimhood status. HRC, *Aumeeruddy-Cziffra and 19 other Mauritanian women v Mauritius*, Communication 35/1978, para.9.1

⁴⁰³ Article 5(1) of the OPCP

⁴⁰⁴ See section 4.2.2 above

reasons. Firstly, a look at the aim and purpose of the OPCP indicates that it is designed to reinforce and complement national mechanisms of considering complaints of children; and encourage States parties to develop appropriate national mechanisms providing effective remedies at the national level strengthening national standards and policies.⁴⁰⁵ It is, therefore, supposed to provide remedy when national systems fail.

Secondly, under general international law, States remain the principal subjects; although contemporary international law has wide participants such as, international and regional organizations, NGOs, public and private companies and individuals.⁴⁰⁶ Regarding individuals, although international human rights law (principally) has taken up the link with States and others subjects a step forward, it has not yet attained the status where individuals in their personal capacity directly interact with every other State. Above all, the development noticed in respect of extra-territorial obligations of States has not continued to create corresponding standing for individuals to bring allegations directly against any delinquent State(s). Rather, such assertions are subsumed under the *locus standi* of States to take up complaints on behalf of victims before international fora for violation by another State of its obligations.

It remains, therefore, that while States parties to the CRC have to ensure the Covenant rights to individuals subject to its jurisdiction (i.e., including extraterritorially), in stark contradiction, an individual complaints procedure is confined principally to victims who are subject to the territorial jurisdiction of the State (not including cases of effective control). What this indicates in the context of climate change is that, victim(s) can vindicate their rights before the CCRC where the State party fail to restrain (within the scope of its human rights obligations) its act and omissions contributing to climate change and ensuing devastating effects or where the State party in question has failed to take the necessary prevention, mitigation or adaptation measures to rescue individuals from the danger.

The OPCP acknowledges complaints submitted by or on behalf of an individual or group of individuals.⁴⁰⁷ The latter envisage situations where large or small group of children can present their complaint before the CCRC, either by themselves or through representative. Thus, there is

⁴⁰⁵ Paras.6 and 8 of the preamble of the OPCP

⁴⁰⁶ N. Shaw, "International Law", (6th ed. 2008), PP.195-260

⁴⁰⁷ Article 5(1) of the OPCP

room for class action. Regrettably, the OPCP failed to recognize public interest litigations (*action popularis*) or also called collective communication. This would have enabled NGOs, national human rights institutions and other public interest groupings or non-State actors to lodge complaints concerning actual or potential violations of rights within the CRC without identifying specific cases involving child victim or groups of victims.⁴⁰⁸ In addition, given the rising contemporary prominence of non-State actors in child rights matters – including in the context of the issue of climate change, the procedure would have been more comprehensive and effective had collective communications were recognized.⁴⁰⁹

Still, however, the CCRC has certain tiny role it can play. The OPCP entitles the right to complaint to group of individuals – which could be small or large.⁴¹⁰ It is not also explicitly prohibited for such groups to be represented by other individuals, small group of individuals representing the interest of larger groups or even by non-State actors. Then, Article 3 of the OPCP empowered the CCRC to adopt rules of procedure to be followed when exercising the functions conferred on it. Such procedures are required to be guided by the principle of the ‘best

⁴⁰⁸ During the drafting process and final adoption processes of the OPCP, the CCRC and other stakeholders have commended the inclusion in the draft of collective communication procedures as a relevant procedure for cases where large group of victims are involved, systematic issues are at stake or the victim group lacks organizing capacity. The CCRC had praised it as a better means of ensuring compliance with the CRC obligations by allowing it to address a problem affecting an ‘indeterminate’ number childrens’ in a single procedure without wasting time in examining identical individual communications separately and, therefore, would reduce case load. Regrettably, the procedure is ruled out from the final draft. As Mr. Zermatten, vice-chairperson of the CCRC then expressed, collective communications procedure has been rejected may be because it is something new in the history of UN human rights treaty bodies and States did not felt it proper to start with child rights; and secondly, it is impossible because of anonymity –since identifying the victim is necessary in order to respond to a communication and determine whether domestic remedies have been exhausted. See Human Rights Council Working Group on an Optional Protocol to the Convention on the Rights of the Child, “Comments by the Committee on the Rights of the Child on the Proposal for a Draft Optional Protocol Prepared by the Chairperson-Rapporteur of the Open-ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to Provide a Communications Procedure”, Second Session, Geneva, February 2011, A/RC/WG.7/2/3, p.4; “Report of the Open-ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to Provide a Communications Procedure” Human Rights Council, 17th session, ay 2012, para.49; M. Langford and S. Clark, (2011), “A Complaints Procedure for the Convention on the Rights of the Child: Commentary on the Second Draft”, Norwegian Centre for Human Rights, (http://www.ohchr.org/Documents/.../NCHR_Commentary.pdf), last visited on August 15, 2012, p.4; and “Interview with Mr. Jean Zermatten, Vice-Chairperson of the Committee on the Rights of the Child, on Communications Procedure on Children’s Rights”, HRTD Newsletter, No.11/ January-February-March 2011, (<http://www2.ohchr.org/english/bodies/.../HRTDNewsletterNo11.doc>), last visited on August 12, 2012

⁴⁰⁹ Unlike the jurisprudence in the UN human rights treaty bodies, regional human rights bodies have the competence to receive collective complaints by group of persons or any non-governmental entity legally recognized in one or more member States. See Article 55 of the ACHPR; Article 44 of the ACRWC, ; Articles 1-12 of the 1995 Additional Protocol to the European Social Charter; and Article 44 of the American Convention on Human Rights, “Pact of an Jose, Costa Rica”

⁴¹⁰ Article 5 (1) of the OPCP

interest of the child’ and have regard for the views of the child; ultimately, make the procedure child-sensitive.⁴¹¹ Therefore, taking in to account the difficulties individual child victims may face to bring an allegation before it were the requirement strictly interpreted, the CCRC has to adopt permissive approach to group complaints. Though it cannot reintroduce the public interest litigation, it can at least mitigate the gap created invigorating class action suit which will have implication on similarly situated large group of children.⁴¹²

4.3.4.2 Inter-State Communications

Several international and regional human rights treaties incorporate provisions which allow one State party to complain to the concerned treaty body about alleged violations of human rights by another State party. Some of the UN human rights treaty bodies set out procedures for the concerned Committee itself to consider complaints from State parties and the procedure apply only to those States parties which have made declarations accepting the competence of the respective Committee.⁴¹³ Some others set out a more elaborate procedure for the resolution of disputes through the establishment of an ad-hoc Conciliation Commission.⁴¹⁴ Among the core international human rights treaties, while CEDAW provides for disputes to be resolved by negotiation or, failing that, by arbitration; the CRPD does not have inter-State communications mechanism so far.⁴¹⁵ Although the procedure is well recognized, to date no State party in any of the treaties has invoked the mechanism. Despite this established ineffective use, the OPCP recognizes inter-State communication with an opt-in clause - making it applicable to States

⁴¹¹ Id, Articles 2 and 3

⁴¹² Unlike State reporting, the OPCP included the follow-up procedure allowing the CCRC to monitor compliance by the State party to its suggestions and recommendations under the individual(s) communications. Accordingly, the State party in question is required to submit a written report, as soon as possible and within six months, on actions it has taken or envisaged to give effect to suggestions and recommendations of the CCRC. The procedure has utmost importance for climate change problems; as it is designed in the light of issues of urgent concerns to avoid unnecessary delays in implementation of the views of the CCRC. see Article 11 of the OPCP

⁴¹³ See for instance, Article 21 of CAT, Article 74 of CMW, Article 32 of the International Convention for the Protection of all Persons from Enforced Disappearance and Article 10 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

⁴¹⁴ Articles 41-43 of ICCPR and Articles 11-13 of CERD; the procedure is applicable to all States parties to CERD, but only to States parties to the ICCPR which have made a declaration accepting the competence of the HRC.

⁴¹⁵ Article 29 of CEDAW; it is further provided that, if within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court. This procedure is also recognized under Article 30 of CAT, Article 92 of CMW and Article 42 of Convention on Enforced Disappearance.

parties which make declaration accepting the competence of the CCRC.⁴¹⁶ The question is ‘what would the significance of this procedure be in the context of climate change problems?’

As it has been elucidated before⁴¹⁷, the primary rules under the CRC impose obligations over States parties to respect, protect and fulfil child rights universally and, more particularly, States parties are required to take all appropriate measures aimed at protecting child rights caught up by climate change. These obligations consecutively entail responsibility of State(s) in case it fails to live up to its obligations. However, responsibility alone would serve no purpose unless accompanied by procedures and forums which States can pursue and get remedy when another State intrudes in to its legally protected interest. On the other hand, it has been underlined in the preceding section that the individual communications procedure does not allow direct claim on all States, rather such allegations are absorbed mainly under the capacity of sovereign State. It is up to that State to espouse the case before international forum. Thus, primarily, the inter-State communications procedure fills the deficit under individual communications procedure enabling State parties to take matters (including Climate change issues) to international body; in this case to the CCRC. Noticeably, however, the mostly theoretical nature of the procedure is a big challenge.

During the drafting process of the OPCP as well, it was suggested that, since the procedure has never been used in practice, it should be excluded from the Optional Protocol as it would serve no purpose.⁴¹⁸ The assumption was that, ‘States are afraid to use the mechanism owing to its possible diplomatic and political implications’.⁴¹⁹ The fear was also manifested by some States in respect to climate change vis-à-vis human rights violations. For instance, countries severely affected or threatened by climate change and its effects, particular Small Island States admit that certain developed countries are the foremost contributors to the climate change problem and thereby created conditions of human rights violations nationally. But they never endeavor to put into effect their accusations through proceedings in any forum. Though there might be legal

⁴¹⁶ Article 12 of the OPCP

⁴¹⁷ See sections 4.2.1 above

⁴¹⁸ M. Langford and S. Clark, cited above at note 409, p.9

⁴¹⁹ Ibid

issues of concern, their fear primarily related to the assumption that such legal action may lead to a dead end by stalling the ongoing negotiation processes.⁴²⁰

However, such argumentation does not indicate that inter-State communications procedure with regard to climate change problems will necessarily end up in vain. For one thing, there is no proof that litigious strategies will run counter to the ever increasing pressure to persuade States to come up with comprehensive accord to the problem. Contrarily, it can be argued that the jurisprudences developing out of inter-State communications will help to articulate the tangible human face and extent of the problem – though it is noticeable that such approach will not be the ultimate solution. Secondly, it is wrong to conceive inter-State communications procedure as an adversarial process. On the contrary, as the procedures in most of the human treaties indicate, the approach is more diplomatic and political than being purely a legal process.⁴²¹ The procedure generally aimed at facilitating negotiations between parties to come up with commonly agreed remedial solution as opposed to conviction. It follows that States parties should better use the procedure as a complementary forum and the CCRC promote this, adopting procedures which promote more participative approach facilitating friendly settlements as opposed to vindication and conviction.

4.4 Conclusion

Under this chapter attention was paid to establishing human rights obligations of States to protect the severe and overwhelming negative impacts climate change has been causing to the rights of the child. Next, on the basis of the human rights obligations under the CRC, evaluation is made as to how the monitoring mechanisms and procedures under the CRC can effectively be used to hold responsible States greatly contributing to the problem, which are however defiant to or rebuffing comprehensive remedial frameworks in other forums. It has also been appraised that, besides serving as a viable course for remedy, the developing jurisprudence of the CCRC accentuate the significance of human rights based approach to the problem and may pressure

⁴²⁰ M. Limon, cited above at note 29, p.571

⁴²¹ The OPCP, unlike the other treaties providing for inter-State communications procedure, does not have detailed procedure on how the overall process has to be conducted. The detail is to be determined in the future ‘rules of procedures’ the CCRC is supposed to adopt. Still, however, Article 12(3) of the Protocol requiring the CCRC “...to make available its good offices to the States parties concerned with a view to a friendly solution of the matter...” envisages the diplomatic nature of the approach the Protocol purport to pursue.

States to deal with the situation sustainably and comprehensively adopting and implementing ultimate international accord.

The fact that climate change issues are not expressly treated under any of the international human rights treaties, including the CRC should not appear as a challenge for drawing corresponding human rights and corresponding obligations of States based on the already existing human rights treaty provisions. As a living instrument, human rights treaties are dynamic; which needs to be interpreted and implemented taking in to account the changing environment so as to take human rights protection and promotion steps forward.

Accordingly, in establishing the obligations of States to contain the adverse effects of climate change on the rights of the child, the prior considerations are the nature, purpose and objective of the right(s) at stake, and the methods of defending that particular right(s). These elements, in one or another way, require broadly interpreting rights regime (considering its nature) and taking appropriate measures the circumstances command in the interest of upholding the reason why the right is constituted and the object it is designed to achieve. These elements are integral to determine the scope (for the purpose of this chapter – territorial scope) of human rights obligations; in addition to the principle of universal protection and promotion of human rights. Therefore, States parties need to comply with their human rights obligations to contain or mitigate the impending effects of climate change on the rights of the child as well as extend cooperation and assistance to adaptation and mitigation efforts.

The human rights obligations result in responsibility. But, be it in respect to the rights of the child or in general human rights law, the relationship between human rights and climate change as well as the meaning (implications), nature, extent and consequence of the obligations of States are not yet clearly set out. Therefore, given their noticeable strength and legitimacy, General Comments, State reports/concluding observations and the communications procedures can effectively be used to articulate the interface between climate change and the rights of the child, to establish obligations of States and the resultant responsibility. It is, however, important to ensure that these mechanisms are not geared towards convicting delinquent States; rather, prioritize diplomatic and friendly solutions - so as to foster the extensive use of the procedures and not to compromise efforts aimed at finding out ultimate and comprehensive solutions.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This study enquired into and described the far-reaching negative impacts of climate change's consequential events on children and how this constitute a challenge for realizing child rights guaranteed under the CRC. The study asserted that, given the tardy progress in international environmental legal regime to come up with comprehensive normative and procedural frameworks ensuring environmental protection and salvage human rights, human rights based approach is an indispensable complementary opportunity – potential and vital (though not ultimate) for dealing with the problem.

Accordingly, the study has explored the human rights normative grounds setting up the obligations of States in respect to climate change; that these obligations engender universal obligations and entail responsibility; and the roles the CCRC can play in formulating and explaining the obligations of States, and monitoring and enforcing compliance therewith. It is shown that, using these human rights normative standards and procedures, at least as enunciated under the CRC, the CCRC can draw attention to the intense negative impacts of climate change on children; enlighten the relevance of human rights law to the problem - by explaining the contents and meanings of obligations of States vis-à-vis climate change; and describe the minimum core obligations or, where the circumstances so require, a range of interventions States parties need to implement to control the problem. This will eventually serve as the basis for action to protect children.

This chapter is divided in to two sections. While section one draws conclusions from the discussions and analysis in the preceding chapters, the second section presents recommendations considered to be appropriate for the concerns identified in the study.

5.2 Conclusion

The underlying assumption underpinning this thesis is that, the existing scrappy environmental law approach to contain climate change and its effects, with its lesser emphasis on human rights, is far beyond adequate. As it has been looked into under chapter two, though the environmental

law approach is crucial which could not be denounced, given the adverse effects climate change has caused and impending threats on human rights which demand urgent and comprehensive measures, and the sluggish progress in terms of reaching ultimate and comprehensive inter-State climate change accord, the involvement of human rights law or human rights based approach appears indispensable. Human rights protection, however, is invoked where there is violation or where the act in question has implications on human rights and where there is an identifiable obligation over the concerned duty-bearer.

This thesis treated climate change and its adverse negative effects as a human rights violation for two reasons. First, climate change is a human security challenge since it: threatens life, human health, food security and livelihood; increase human exposure to extreme events and endanger coping capacity of individuals and communities; and will increase the risk of domestic and inter-State conflicts. This is against one of the foundational principle of human rights protection (i.e., freedom from fear), and as such constitute human rights violation.

The second reason is the response to the counter arguments based on the issues of causation, i.e., indeterminacy of the duty bearer and conceiving climate change only as a future event with consequences not yet materialized. It has been asserted that though the jurisprudence on human rights based approach is at its early stage and has not yet sorted out these contentions, it is not difficult to overcome the issues on the basis of the existing clues and the ever increasing scientific investigations and techniques. Regarding the futurity of the harm, chapter three has described the current discernible impacts. As regards indeterminacy of the duty bearer(s), there are growing scientific and technical mechanisms which will help to determine the duty bearer as well as apportion the corresponding responsibility. Notwithstanding this, it is also illogical to conclude that until such time that these issues are addressed climate change doesn't violate human rights.

On top of these, the study pointed out that, though there is readily perceived distinctions between environmental law and human rights based approaches, they are interdependent; as they have complementary objectives and mutual aspirations. Particularly, from purposive point of view, linking the two approaches has the practical benefit that enables human rights treaty bodies, including the CRC, to transpose and utilize standards and principles under environmental law regime to the context of human rights to trace the causal connection among the adverse effects of

climate change, an injury sustained, the conduct of a State (s) complained of, and finally determine the nature and extent of obligations of States.

The right to clean and healthy environment in general or the right to be protected from climate change and its adverse consequences has not so far been distinctly stipulated under major international human rights instruments, including the CRC. In this respect, regional human rights instruments and national legislations are better-off.⁴²² But, this does not in any way preclude the application of the already established human rights normative standards. As noted under chapter three, the enjoyment of other rights, identified in this thesis as rights of the child implicated by climate change, are in one or another related with maintaining habitable environment where life is feasible. There is a strong link between preserving clean and healthy environment and the enjoyment of virtually all ranges of the rights of the child. This inextricable bond denotes the interdependence among the rights and the underlying rationales behind the protection of the environment. This, in conjunction with the principle of positive interpretation of human rights treaty provisions, is a good cause to extend the application of relevant existing human rights standards to the issues of climate change.

Accordingly, chapter three explored some of the serious impacts climate change has caused to the rights of the child. It is stated that climate change has critical impacts on the child rights to life, survival and development, the right to health, food, water, housing, education, and others - due to the different climate change caused events. These descriptions evidence that climate change and consequential adverse events are critical challenges for realizing the rights of the child as enunciated under the CRC owing to the physical, physiological and cognitive immaturity of children denoting weak coping capacity to hardships. Thus, the injury and impending dangers that risk the life, growth, development and overall well-being of the child greatly challenge the objective of the CRC to improve the situation of children at global level. In the short term, in those countries already challenged by underdevelopment such as sub-Saharan African and some Asia-Pacific countries, climate change negative impacts and vulnerability brought impediments for progress to achieve the MDGs – which set essential goals directly related with the rights of the child. Generally, the burden augmented the look for any sort of help under human rights laws, with specific emphasis on the CRC which points to concrete action.

⁴²² See notes cited above at 114 and 115

Attention was first paid to human rights obligations of States vis-a-vis climate change which can be derived from the CRC. Though States have not pledged to undertake specific mitigation or adaptation measures under the CRC or international human rights laws in general, the nature, scope, purpose and other aspects of rights may enable one to construe right(s) so that appropriate obligations can be derived to ensure full, effective and progressive protection of human rights. Such construing necessarily involves consideration of the various means by which an obligation can be given effect. Accordingly, where mitigation and adaptation measures are anticipated in the interest of respect for human rights, there is no reason why they could not fall under the range of human rights obligations under the CRC. Therefore, on the broader issues of respecting or protecting human rights in the context of climate change, it is possible to derive States human rights obligation to control emission as well as undertake other mitigation and adaptation measures, albeit generally. Thus, children can rely on the CRC to entail States responsibility for counteracting climate change or as a legal means of reparation for damage.

So far, however, human rights law jurisprudences did not adequately integrated climate change concerns in to human rights law. So does the CCRC. Though the CCRC is appropriate forum to deal with the intricacies children are facing as a result of climate change and, has the mandate, competence and above all the legitimacy, it has not yet acted on. Among others, it could provide appropriate and detailed explanations on the legal basis of States obligations; the contents, nature, scope, and other aspects of the obligations such as, determining violations of obligations; and can launch the necessary implementation and monitoring mechanisms. The silence risks the human rights obligations to remain at the level of generality.

The mechanisms at the disposal of the CCRC which are of particular importance to discharge its responsibilities are; State reporting/concluding observation, General Comments and the communication procedures. States reporting/concluding observations system offers a commendable opportunity to require States to provide information on their activities, the national or international measures a State has undertaken or on any matter related to climate change within a State's jurisdictions. Such information can effectively be used to monitor situations in a State or its international implications, *mutatis mutandis*. Further information can also be acquired from the State itself and/or other sources as the CRC has empowered the CCRC. The latter includes the competence to invite concerned NGOs, experts, UN treaty bodies and other bodies

the CCRC deem relevant, so as to provide expert and technical advice and assistance or submit reports within their scope of mandate. These enable the Committee to get the necessary information and evidence through coordinated action and, eventually reflect its views, both on international dimensions of the problem and the corresponding way out. However, the dearth of broader, well-informed, consistent and analytical consideration of State reports in respect to climate change and, generally, the meager application of these procedures so far is the downside on the part of the CCRC. Likewise, the lack of an established formal way of ensuring effective implementation of the observations and recommendations of the CCRC is a setback worth consideration.

In a general comment, as component of the activities mentioned in the previous paragraphs, the CCRC can provide comprehensive and articulated analysis establishing the link between the relevant rights under the CRC, the impacts of climate change and, the nature and extent of State parties' obligations. It can also point to the different activities of States parties which contribute to the problem and which are likely to compromise the health, development or general well-being of the child. Though the determination of specific measures States are required to adopt or implement involve certain level of complexity and fall beyond the mandate of the CCRC, it can still formulate general, but core obligations States need to consider in all circumstances; possibly based on their obligations under the CRC in company with the frameworks under environmental law and other empirical researches in the area. These may provide direction and assist States parties on the concrete steps they need to take; significantly contribute for instilling human rights based approach; and draw the attention of States to the exigency of international assistance and cooperation aimed at preventing or limiting the extent of the problem – including the absolute necessity of effective and comprehensive international accord integrating human rights/the best interests of the child.

Finally, individual(s) and inter-State communications procedures are important medium under which the CCRC can entertain cases of violations of human rights as a result of the failure of the State(s) concerned to live up to their obligations in respect to climate change. However, as it has been pointed out under chapter-two⁴²³, issues related with causation, complexities in the determination of the harm-doer and doubts as regards existent adverse effects of climate change

⁴²³ See Chapter Two, sections 3.3.1 and 2.3.3

are often raised as challenges to human rights based approach in general and more particularly, in relation to adjudicating climate change related complaints. Concerning the OPCP, the apparently stringent requirements for victimhood and derecognition of collective communications under the individuals complaints procedures are another issues of concern. Equally, the ineffective use of inter-State communications procedures for alleged diplomatic repercussions is a challenge which will hold back the procedure and may obliterate the hope that the procedure will set off the deficit under individual communications which do not recognize individuals' direct claim against any perpetrator State. But, these challenges are not insurmountable. They can positively be resolved in the best interest of the child - based on the available scientific evidences and legal principles.

Penultimately, this thesis recognizes that human rights based approach to climate change in general or more importantly, the projected endeavors of the CCRC in respect to the impacts of climate change on the rights of the child are not the ultimate solution to the intricate and serious climate change problems. Rather, it is a complementary approach aimed at establishing the human rights dimension of the problem. Basically, human rights approach is commended for its straight forward ways of defending human rights through an already established and relatively full-fledged implementation and monitoring mechanisms compared to environmental law approach. However, from efficiency point of view both systems highly demand the allegiance and cooperation of States and other stake holders at different levels. Of course, regarding States the degree of acquiescence required under human rights law differ as the system has already had the normative and procedural standards. In any case, the effectiveness of the system demand the coordinated act of States, other UN human rights treaty bodies, UN organs and specialized agencies, national and international NGO's and other competent bodies.

5.3 Recommendations

Some scholars, as has been explored under chapter two⁴²⁴, argued that legally speaking human rights based approach will not fit climate change problems; owing principally to the unidentifiable duty-holder. In the opinion of this researcher, however, this is the problem arising from obsession to understand human rights violations only as an instant outcome resulting from

⁴²⁴ See chapter two, section 2.3

failure of a specific State. Rather, the practical and dynamic nature of human rights, and the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with international human rights treaties call for progressivism in implementing normative standards. Accordingly;

- States parties which have failed to take the necessary prevention, adaptation or mitigation measures and more particularly, States majorly contributing to the problem, respectively have the core obligation in relation to the national and international impacts of climate change on the rights of the child. Though human rights based approach hinged on already set standards and more or less developed implementation and monitoring mechanisms, still its efficacy depend on the allegiance and cooperation of (predominantly) States parties to the respective human rights treaties. Accordingly, in the interest of protecting, promoting and respecting the rights of the child restrained by the adverse effects of climate change (be it at the national level, regionally or internationally) States have to take joint and separate action, including under international cooperation and assistance, to curtail the problem, redress human rights violations already sustained and/ or assure adaptation and mitigation.
- As the effectiveness of the human rights based approach demands the technical and expertise assistance (to the CCRC as well as States parties) from other bodies, it remains the responsibility of UN organs and its specialized agencies (such as, UNICEF and FAO), expert groups such as IPCC, national and international NGOs which work on child rights and other concerned competent organs to undertake empirical and comprehensive assessment of the negative impacts of climate change on the rights of the child and draw attention of States and the CCRC to the matter
- For the human rights based approach to produce any practical effect, primarily it is essential to instill the inextricable link between the existent relevant human rights normative standards (under the CRC), the integral obligations and responsibilities of States, potential remedies therein, and generally, the impacts of climate change which, directly or indirectly, follow-on its effects on the environment. Unless, it will not be possible for States parties to discharge their obligations properly or for the beneficiaries

(i.e., childrens) to use the mechanisms under the CRC as a legal course of action. Therefore, it remains the principal duty of the CCRC to foster a deeper understanding of the contents and implications of the CRC as they relate to the impacts of climate change on the rights of the child.

- Primarily, the CCRC has to adopt general comment on the impacts of climate change on the rights of the child. General comment is one of the essential means of drawing attentions of States parties to thematic issues of concern such as, climate change. Though the CCRC used to prepare general comments based upon its experience gained through examination of State reports and, more often, after having held a day of general discussion on the specific provision or theme,⁴²⁵ general comments can also be issued beforehand expressing the intention of the CCRC on what it expect in subsequent State reports. To understand how past and existent climate change effects are compromising the rights of the child or to be acquainted with the technical details and empirical evidences, the CCRC can use its authority under Article 45 of the CRC. It empowers the CCRC to request or invite the office of UN Secretary-General, other UN organs, specialized agencies and other competent bodies (including the IPCC) to provide technical advice and expertise or submit reports on specific or general matters, as it relates to identified situations and fall under the scope of mandate of the organs

- The general comment has to distinctly set out: the negative impacts climate change has caused and causing to the rights of the child; the resulting general and core obligations of States parties deriving from the CRC's normative frameworks; and more particularly, the extraterritorial dimension of the human rights obligations which require States parties to refrain from actions and omissions related with climate change and having impacts on the enjoyment of child rights universally. Additionally, the steps States are required to make and appropriate means which shall be used in order to satisfy the obligations; the role of international assistance and cooperation to bring comprehensive and eventual result; and the roles of international organizations, UN bodies, specialized agencies and other

⁴²⁵ Verheyde and G. Goedertier, cited above at note 352, p.40; and "Human Rights and Climate Change: Practical Steps for Implementation", cited above at note 348, p.25

competent bodies in putting forward the situations, undertaking studies of relevance and providing expertise has to be defined.

- The CCRC has to effectively use the State reporting procedure to conduct a thorough and comprehensive review of State reports in respect to climate change impacts on the rights of the child. The general guidelines regarding the form and content of periodic reports of State's parties under Article 44, paragraph 1(b) of the CRC has to be amended⁴²⁶ entailing obligation over States parties to provide sufficient information regarding their activities in relation to climate change and/or to provide details concerning difficulties encountered as a result of climate change vis-à-vis ensuring the rights of the child.
- To obtain comprehensive and sufficient information depicting the whole picture of the problem in certain State and determine the activities which have to be restraining within the wider context of States' international human rights obligations, the CCRC has to resort to its authority under Articles 44(4) and 45 of the CRC. These provisions allow the CCRC to get further information from the State party concerned and expertise advice and complementary reports from the UN organs, specialized agencies and other competent bodies the CCRC considers appropriate. Based on these information, the CCRC has to undertake consistent, more focused, well-informed, broader and analytical study and evaluation of the overall situation in a country; the activities of a State as it relates to climate change and its impacts on universal protection and promotion of child rights. These avoid the tenuous and irregular consideration by the CCRC of the issue and minimize the indifference of States parties regarding the follow-up of the CCRC to the problem.
- Moreover, the CCRC has to employ concluding observations as a relevant instrument to commend positive developments in a State(s) and share the experience to other States. It can also point out areas where the Sate concerned or the international community at large

⁴²⁶ Amending the guidelines on State reports under Article 44, paragraph 1(b) of the CRC becomes necessary where the CCRC does not opt to adopt general comments in advance. If not, States parties are required to contain under their reports additional information specific to the implementation of the CRC taking into account the relevant general comments of the CCRC.

has obligation to take further action. The CCRC should also reflect upon comprehensive international mechanisms of monitoring the situation and pressure or call up State parties to extend their cooperation and assistance for such effort.

- To ensure the effectiveness of the State reports/concluding observations process in general and more particularly, in respect to climate change, the CCRC has to adopt a formal procedure to follow-up to its concluding observations. It shall also increase cooperation and solidarity with other UN human rights treaty bodies and other competent bodies; to create universal understanding of the matter and to establish a comprehensive and effective international monitoring in the interest of protecting and promoting human rights universally.
- Under the OPCP, the CCRC has to adopt rules of procedures which maximize children's participation in the complaints process. In particular, the CCRC has to broadly construe the requirement of victimhood to bring complaint; so much so that impending serious consequences of climate change will not be ruled out of the purview of the OPCP. To fill the discrepancy created as a result of derecognition of collective communications procedure, the CCRC has to demonstrate a sort of flexibility with regard to class action complaints. The latter will enable cases involving the interest of large group of childrens to be settled through litigations brought by relatively small group of similarly situated persons, but having implications on the former.
- Concerning the inter-State communications procedure, the CCRC has to adopt appropriate and detailed procedural frameworks aimed at ceasing the established ineffective use of the procedure and ensure its significance in terms of enabling States parties to espouse complaints before international forum against any delinquent State(s) – which individual complainants are not allowed for.

On the whole, as it has been reiterated, the CCRC should handle the delicate and complex climate change issue as it implicates child rights prudently. Above all, the CCRC's monitoring mechanisms application in respect to climate change should not primarily be geared towards condemning and inflicting penalty. Rather, they should prioritize instilling

the human rights dimension of the problem and underlying issues that require special follow-up based on constructive dialogue and friendly settlement of matters with the State(s) party concerned. Because, as the study presented, the CRC's normative and procedural frameworks are complementary approach which will significantly contribute to the endeavor to protect children from the serious effects of climate change; and the Convention put forward international and multi-sectional cooperation as a vital course to advance the situation of children.

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