

Commentary to the Maastricht Principles on the Human Rights of Future Generations

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Forthcoming in *Human Rights Quarterly* (August, 2025).

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Introduction

The rights of future generations have long been neglected in the analysis and application of human rights. Yet, human rights law does not limit itself to present generations. The foundations for international law to address the rights of future generations are established in international instruments in an array of subject areas spanning nearly a century; constitutions and legislative acts adopted by the majority of the World's States; in the laws, traditions, and cosmologies of Indigenous Peoples from every continent; and in the doctrine of major faith traditions representing the majority of the world's people.

The Maastricht Principles on the Human Rights of Future Generations (Maastricht Principles on Future Generations or Principles) seek to clarify the present state of international law as it applies to the human rights of future generations. The Principles consolidate the developing legal framework and affirm binding obligations of States and other actors as prescribed under international and human rights law. They also provide a progressive interpretation and

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The present Commentary was authored by the individuals listed, each contributing in their personal capacity as members of the Drafting Group responsible for facilitating the development of the Maastricht Principles on the Human Rights of Future Generations. Gideon Basson joined the Drafting Group after the adoption of the Principles. The institutions mentioned alongside the authors' names are listed for identification purposes and do not necessarily indicate institutional endorsement of the Commentary's content.

The authors acknowledge the administrative assistance of Katharina Maier, the research assistance of Biobele Danagogo and Camilo Cornejo Martinez, as well as the input from various participants in the process of developing the Principles. The Drafting Group also acknowledges the guidance, support, and encouragement received from the members of the Steering Group of the Maastricht Initiative—Rolf Künnemann, Ana-Maria Suarez-Franco, Sébastien Duyck, Sigrun Skogly, Judith Bueno de Mesquita, and Fons Coomans—during the drafting of the Principles and Commentary.

development of existing human rights standards in the context of the human rights of future generations. They further recognize that States may incur additional obligations as human rights law continues to evolve.

These Principles provide examples of how realizing rights of future generations requires attention to the distinct rights of particular groups and peoples but do not do so comprehensively. It is important to read these Principles together with other human rights standards setting out the implications of human rights for particular groups, including groups subject to historic and current systemic discrimination in its many forms.

The Principles represent the result of a process of close to six years of research, analysis, dialogue, and collective refinement, with the engagement of a range of academic experts, national and regional current or former human rights mandate holders, civil society organizations, members of Indigenous Peoples, and social movements. They build on historic traditions and knowledge spanning millennia.

The Principles were adopted in Maastricht on 3 February 2023. Signatories are experts from all regions of the world and include current and former members of international human rights treaty bodies, regional human rights bodies, and former and current Special Rapporteurs of the United Nations Human Rights Council. This initiative builds on expert legal opinions adopted in Maastricht, namely the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986); the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997); and the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011) and their accompanying commentaries.¹

The explanation of each Principle and the sources supporting them are set out in the Commentary to these Principles below. The Commentary reflects developments up to 30 September 2024, and any sources or developments after this date have not been considered.

Preamble

- I. *The Universal Declaration of Human Rights, the International Covenant on Economic, Social, Cultural Rights, and the International Covenant on Civil and Political Rights all proclaim that recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.*
- II. *Neither the Universal Declaration of Human Rights, nor any human rights instrument contains a temporal limitation or limits rights to the present time. Human rights extend to all members of the human family, including both present and future generations.*
- III. *Human generations exist within an unbroken continuum that is continually renewed and redefined as untold new members join the living human community. Any treatment of human generations and their respective rights must recognize and reflect this continuum.*
- IV. *The human rights of future generations form an essential dimension of humankind's duty to uphold the inherent dignity, equality, and inalienable rights of all.*
- V. *Decisions being taken by those currently living can affect the lives and rights of those born years, decades, or many centuries in the future. In recent decades, the need to recognize the*

1. *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, adopted Jan. 8, 1987, U.N. ESCOR, Comm'n on Hum. Rts., 43d Sess., Agenda Item 8, U.N. Doc. E/CN.4/1987/17, annex (1987) [hereinafter *Limburg Principles*]; Victor Dankwa et al., *Commentary to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 20 Hum. Rts. Q. *Rights* 705–30 (1988) [hereinafter *Maastricht Guidelines on Violations of ESCRs*]; Olivier De Schutter et al., *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 34 Hum. Rts. Q. 1084–1169 (2012) [hereinafter *Maastricht Principles on ETOs*].*

intergenerational dimensions of present conduct has taken on increasing urgency. Humanity, the Earth on which we live, the natural systems of which we are but one part, and our political, social, cultural, and economic systems, are in the midst of profound, rapid, and perilous change at humanity's own hands.

- VI. *Recognizing and ensuring the rights of future generations demands an evolution of decision-making processes to consider and ensure both justice and sustainability across an array of timescales, including the present, near term and distant future.*
- VII. *Children and youth are closest in time to generations still to come and thus occupy a unique position, and have an important role to play within this transition to long-term, multigenerational thinking. Accordingly, their perspectives and participation in decision-making with respect to long-term and intergenerational risks must be accorded special weight.*
- VIII. *Intergenerational justice has both individual and collective dimensions.*
- IX. *Women and girls continue to bear the burden of many of societies' greatest challenges. Pervasive social norms and gender stereotypes continue to hold society back from attaining substantive gender equality. Women and girls face systemic discrimination in their enjoyment of all human rights, including a lack of meaningful participation in decision-making processes despite their influence and vital role in securing community and household resources. Gender inequality, if unaddressed, undermines the rights of both present and future generations.*
- X. *Systematic racial, ethnic and religious, and other forms of discrimination, exploitation and the inequitable distribution of wealth, resources, and opportunities, between and within countries, undermine the rights of present generations and compound the threats to future generations. Accordingly, efforts to address and remedy intragenerational injustice are essential to achieving justice between generations. This requires the fulfilment by States of their extraterritorial obligations, including in the context of the regulation of transnational corporations.*
- XI. *The worldviews and ways of life of many Indigenous Peoples reflect the continuum of the relationship between present and future generations and the intrinsic linkage between humankind and the land and ecosystems of which humanity is a part. These systems, and the continuum and interlinkages they safeguard, are endangered through the taking and degradation of Indigenous Peoples' lands, territories, and resources. Accordingly, the full recognition of the sovereignty and effective implementation of the rights and sovereignty of Indigenous Peoples is a shared obligation to both present and future generations of humanity.*
- XII. *Peasants and traditional communities, including fishers, pastoralists, forest-dependent people, nomadic people, and rural women, play a key role in conserving biodiversity and ensuring adequate and sustainable food systems for both present and future generations. Safeguarding their rights and resources is critical for safeguarding and realizing the human rights of future generations.*
- XIII. *Humanity is a part of the world, not apart from it. The rights of future generations must be interpreted and applied in light of humanity's dependence on and responsibility to Earth's natural systems, now and throughout our species' future.*
- XIV. *The human rights of future generations must be understood, interpreted, and integrated within the evolving legal context recognizing humanity's relationships with the natural world, and the best available science. This context includes the right to a clean, healthy and sustainable environment, the growing recognition of the rights of Nature, and the knowledge systems of Indigenous Peoples, local and traditional communities.*
- XV. *The cessation of unsustainable patterns of production, consumption, and lifestyles is required to guarantee the full enjoyment of human rights, including economic, social, cultural, and environmental rights, by all members of present and future generations. Human development must be decoupled from the destruction of Nature and the overconsumption of natural resources to achieve the realization of the human rights of present and future generations and the integrity of Nature and natural systems.*

I. GENERAL PROVISIONS

1. Definition: Future Generations

For the purposes of these Principles, future generations are those generations that do not yet exist but will exist and who will inherit the Earth. Future generations include persons, groups, and peoples.

Commentary

(1) International law has not yet evolved to recognize an authoritative definition of “future generations.” Principle 1 defines future generations as generations who do not yet exist, but who will exist. They will be the descendants of currently living individuals, groups, and peoples. The fact that we cannot identify the specific individual persons or groups of persons that will be alive in the future² does not preclude the recognition of human rights duties toward humans who will exist in the future.³ As Fons Coomans et al. argue, it is also possible to specify classes or groups of future persons, for example, residents of Mumbai at the end of 2180, or “the future generations of country X” at the end of 2180.⁴ If it is reasonably foreseeable that these future individuals or groups will be denied fundamental rights unless present generations refrain from conduct incompatible with those rights, then it follows logically that present generations owe human rights obligations to these future generations.⁵

(2) A similar definitional approach to that adopted in Principle 1 is contained in the introductory note to the Letter to the President of the United Nations (UN) General Assembly, which contains the Elements Paper for the Declaration for Future Generations,⁶ where the term “future generations” is defined as “all those generations that do not yet exist, are yet to come and who will eventually inherit this planet.”⁷ This definition is affirmed in the UN Secretary-General’s *Our Common Agenda: Policy Brief 1: To Think and Act for Future Generations*.⁸ The Policy Brief notes that future generations will be “vastly more numerous than present generations.”⁹ According to current demographic estimates, “more than 10 billion people are projected to be

2. DEREK PARFIT, REASONS AND PERSONS 351–80 (1984) (on the “non-identity problem”).

3. U.N. Secretary-General, *Intergenerational Solidarity and the Needs of Future Generations*, U.N. GAOR, 68th Sess., Agenda Item 19(a), ¶¶ 19–23, U.N. Doc. A/68/322 (Aug. 15, 2013).

4. Fons Coomans et al., *Filling Gaps in International Human Rights Law to Address Global Land and Resource Grabbing: Extraterritorial Human Rights Law Obligations of States and the Rights of Future Generations*, in ROUTLEDGE HANDBOOK OF GLOBAL LAND AND RESOURCE GRABBING 459, 464 (Adreas Neef et al. eds., 2023).

5. *Id.*

6. U.N. President of the General Assembly Letter, Elements Paper for the Declaration for Future Generations (Sept. 9, 2022), <https://www.un.org/pga/76/2022/09/12/general-assembly-declaration-on-future-generations-pga-letter/>.

7. *Id.* at 1.

8. U.N. Secretary-General, *Our Common Agenda: Policy Brief 1: To Think and Act for Future Generations*, U.N. GAOR, 77th Sess., Agenda Item 126(a), U.N. Doc. A/77/CRP.1 (Feb. 7, 2023) [hereinafter *Our Common Agenda: Policy Brief 1*]. The definition is also restated in the Declaration on Future Generations, adopted Sept. 22, 2024, G.A. Res. 79/1, U.N. GAOR, 79th Sess., Agenda Item 3, annex II pmbl. ¶ 4, U.N. Doc. A/RES/79/1 (Sept. 22, 2024) [hereinafter 2024 UN Declaration on Future Generations].

9. *Our Common Agenda: Policy Brief 1*, *supra* note 8, ¶ 1. See also 2024 UN Declaration on Future Generations, *supra* note 8, pmbl. ¶ 10.

born before the end of this century alone, predominantly in countries that are currently low- or middle-income.”¹⁰

(3) Whether the definition of future generations should incorporate already-born children, particularly over the course of their lifespan as future adults is more complex.¹¹ Humanity exists within an unbroken continuum, in which the line between present and future generations continually shifts as new children are constantly being born. Children and youth are recognized as holders of human rights under customary international law, as well as a range of international and regional human rights treaties protecting children,¹² youth,¹³ and all persons.¹⁴ Although currently living children and youth are not regarded as future generations in terms of these Principles, their temporal proximity to future generations affords them a special and significant status in efforts to respect, protect, and fulfill the rights of future generations. As the Preamble of the Principles notes:

Children and youth are closest in time to generations still to come and thus occupy a unique position, and have an important role to play, within this transition to long-term, multigenerational thinking. Accordingly, their perspectives and participation in decision-making with respect to long-term and intergenerational risks must be accorded special weight.¹⁵

(4) Due to their young age, children today will bear the heaviest burden of the impacts of phenomena such as biodiversity loss and climate change over the course of their lifespans.¹⁶ They are also uniquely at risk because of their characteristics as children and exclusion from democratic and other decision-making processes.¹⁷ As a result, children and youth will live the near entirety of their lives affected by future, but often foreseeable, consequences of present decisions over which they have little or no legal, economic, or political influence. While the burden of representing and advocating for the rights of future generations should not fall exclusively on children,¹⁸ their proximity to and “overlapping interests” with future generations

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10. *Id.* ¶ 1. See also ROMAN KRZYNARIC, *THE GOOD ANCESTOR: HOW TO THINK LONG TERM IN A SHORT-TERM WORLD* 82–84 (2020) (on the scale of future generations).
 11. Aoife Nolan, *The Children are the Future – Or Not? Exploring the Complexities of the Relationship Between the Rights of Children and Future Generations*, EJIL:Talk! (May 26, 2022), <https://www.ejiltalk.org/the-children-are-the-future-or-not-exploring-the-complexities-of-the-relationship-between-the-rights-of-children-and-future-generations/>; Aoife Nolan, *Children and Future Generations Rights Before the Courts: The Vexed Question of Definitions*, 13 *Transnat’l Env’t L.* 1–25 (2024) (for a detailed exploration of the definitional complexities entailed in future generations vis-à-vis children).
 12. *E.g.*, Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., U.N. Doc. A/44/49 (1989), 1577 U.N.T.S. 3 (*entered into force* Sept. 2, 1990) [hereinafter CRC]; African Charter on the Rights and Welfare of the Child, *adopted* Jul. 11, 1990, O.A.U. Doc. CAB/LEG/24.9/49 (*entered into force* Nov. 29, 1999) [hereinafter African Children’s Charter].
 13. *E.g.*, African Youth Charter, *adopted* 2 Jul. 2006, A.U. Doc. CAB/LEG/26.15 (*entered into force* Aug. 8, 2009).
 14. *E.g.*, International Covenant on Civil and Political Rights arts. 23(4), 24, *adopted* Dec. 16, 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights arts. 10, 12(2)(a), 13(3), *adopted* Dec. 16, 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* Jan. 3, 1976) [hereinafter ICESCR].
 15. See *supra* PmbI. ¶ VII.
 16. U.N. Int’l Children’s Emergency Fund (UNICEF), *The Coldest Year of the Rest of Their Lives: Protecting Children from the Escalating Impact of Heatwaves* (UNICEF, Oct. 2022); Pact for the Future, *adopted* Sept. 22, 2024, G.A. Res. 79/1, U.N. GAOR, 79th Sess., Agenda Item 3, ¶ 58, U.N. Doc. A/RES/79/1 (Sept. 22, 2024) [hereinafter 2024 Pact for the Future].
 17. AOIFE NOLAN, *CHILDREN’S SOCIO-ECONOMIC RIGHTS, DEMOCRACY AND THE COURTS* 131–32 (2011) (describing children as a group “outside democracy”).
 18. See Nolan, *Vexed Question*, *supra* note 11, at 22. Nolan astutely observes:

should entitle them to a special status in decision-making which will impact them over the course of their lifespans as well as future generations of children.¹⁹ These Principles thus recognize State obligations concerning the participatory rights of present children, adolescents and youth in relation to decisions impacting on the human rights of themselves and future generations.²⁰ The Principles also require States to ensure an effective remedy to victims of human rights violations of future generations, including ensuring that victims and their representatives have standing before courts and human rights bodies.²¹ In line with the emerging trend observed in climate change litigation, this should include recognizing and enabling the rights of children and youth to litigate on behalf of themselves and future generations.²² Moreover, the Principles recognize the obligation of States to respect and ensure the full enjoyment of children's human rights in the present as well as ensuring that their human rights in the future are not jeopardized.²³

(5) The definition of future generations in Principle 1 includes persons, groups, and peoples. These future generations will be the descendants of persons, groups, and peoples living in the present. For example, it is quite possible to advocate for or litigate to protect the human rights of the descendants of Indigenous Peoples in a particular region. The same applies to the descendants of communities, groups, or individuals. As Principle 7 recognizes, the intergenerational transmission of human rights violations is closely linked to existing patterns of disadvantage disproportionately impacting particular groups, individuals, and peoples. In the absence of positive measures, these intragenerational inequities and disadvantages will be transmitted to the descendants of these groups, individuals, and peoples.²⁴ It is thus essential to recognize that future generations do not constitute an amorphous collectivity, but distinct individuals, groups, and peoples who will be especially at risk to human rights violations due to historical legacies and current patterns of injustice and disadvantage.

2. *Legal Basis for the Human Rights of Future Generations*

2.1 *Future generations are legally entitled to human rights on the basis of amongst others:*

Where courts fail to engage with FG [future generations] but instead use children's rights as a vehicle for addressing issues of intergenerational concern, this may risk child constitutional rights being reduced to "future generations rights by other means".

19. *Our Common Agenda: Policy Brief 1*, *supra* note 8, ¶ 2.
20. See Commentary, Princ. 22(c), (e). On children's participatory rights, see, e.g., CRC, *supra* note 12, art. 12; African Children's Charter, *supra* note 12, arts. 4(2), 7. See also Rongedzayi Fambasayi & Michael Addaney, *Cascading Impacts of Climate Change and the Rights of Children in Africa: A Reflection on the Principle of Intergenerational Equity*, 21 Afr. Hum. Rts. L. J. 29, 46–47 (2021).
21. See Commentary, Princs. 22(c), 30(c).
22. E.g., Corte Suprema de Justicia [Sup. Ct. Just.], *Demanda Generaciones Futuras v. Minambiente*, No. STC4360-2018, 11001-22-03-000-2018-00319-01 (Apr. 5, 2018) (Colom.) (unoff. transl., <http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>) [hereinafter *Future Generations v. Colom. Min. of Env't*]; *Mathur v. Ontario*, 2020 O.N.S.C. 6918 (2020) (Can.); Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], Mar. 24, 2021, *Entscheidungen des Bundesverfassungsgerichts [BVerfGE] Rn. (1-270)*, ECLI:DE:BVerfG:2021.1bvr265618 (Ger.) (unoff. transl., https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200206_11817_complaint.pdf) [hereinafter *Neubauer v. Germ.*]. See generally Aoife Daly, *Climate Competence: Youth Climate Activism and Its Impact on International Human Rights Law*, 22 Hum. Rts. L. Rev. 1–24 (2022).
23. See Commentary, Princ. 7(b).
24. See Commentary, Princs. 6(d), 7(a).

- a) *International law in its various forms which recognizes human rights for all people, without limiting these rights to present generations;*
- b) *International law in its various forms that explicitly or implicitly recognize obligations and responsibilities toward future generations, and seek to ensure intergenerational equity; and*
- c) *General principles of law, as reflected in laws, norms, customs and values of States and peoples from all global regions and belief systems that recognize obligations and responsibilities toward future generations, or that are and will continue to be relevant to the protection of the human rights of all, without limiting them to present generations.*

2.2 *The above bases do not preclude other sources of law recognizing the rights of future generations that are consistent with these Principles.*

Commentary

(1) International human rights law derives its authority from several sources and is an integral part of general international law.²⁵ International human rights law consists of a body of “living” rights and legal principles, norms, and standards, established at the international, regional, and domestic levels to protect and promote the fundamental rights and freedoms of all individuals and groups.²⁶ Its living quality ensures that it provides innovative and effective protections for all human beings and aims to be responsive to past, present, and future challenges that undermine its realization.²⁷ The preamble to the UN Charter explicitly connects this temporal dimension to the purpose of the UN, proclaiming the protection of “succeeding generations” from the “scourge of war” as a core reason for the Charter’s adoption and the establishment of the UN.²⁸ The UN Charter thus acknowledges that the UN system was established to ensure an ongoing responsibility to consider and protect generations to come.

(2) Article 1 of the Universal Declaration of Human Rights (UDHR) states that “all human beings are born free and equal in dignity and rights” and “are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”²⁹ Drawing from this Article, the UN Secretary-General’s report on intergenerational solidarity and the needs of future generations states that the basis for the obligations toward future generations is “the equal concern and respect that we owe to all humans, regardless of where and when they may have been born.”³⁰ This interpretation aligns with the evolving jurisprudence of international law, as reflected in the

25. Bruno Simma & Philip G. Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principle*, 12 *Austr. Y.B. Int’l L.* 82–108 (1992).

26. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 *I.C.J. Rep.* 15, 51 (May 28) (separate opinion by Álvarez, J.) (stating that human rights treaties are “multilateral conventions of a special character” that must be interpreted “with regard to the future”). The “living” nature of human rights treaties emanates from *Tyrer v. U.K.*, App. No. 5856/72, 26 *Eur. Ct. H.R.* (ser. A) ¶ 31 (1978). See also *Environment and Human Rights* (Arts. 4(1), 5(1) in relation to Arts. 1(1), 2 of the American Convention on Human Rights), Advisory Opinion, OC-23/17, *Inter-Am. Ct. H.R.* (ser. A) No. 23, ¶ 43 (Nov. 15, 2017).

27. See generally ANTÔNIO A. CANÇADO TRINDADE, *INTERNATIONAL LAW FOR HUMANKIND: TOWARDS A NEW JUS GENTIUM* 31–51 (2010) (on the temporal dimension of international law and the role of international human rights law in this regard).

28. U.N. Charter *pmb.*, ¶ 1, June 26, 1945, 59 *Stat.* 1031, T.S. No. 993, 3 *Bevan* 1153 (entered into force Oct. 24, 1945) [hereinafter U.N. Charter].

29. Universal Declaration of Human Rights art. 1, adopted Dec. 10, 1948, G.A. Res. 217 (III), U.N. GAOR, 3d Sess., U.N. Doc. A/RES/3/217A (1948) [hereinafter UDHR].

30. *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 13, U.N. Doc. A/68/322 (2013).

view of the International Court of Justice, which has recognized that State obligations under international law are not limited to present generations but also apply to future generations.³¹

(3) The UN Charter affirms that “fundamental human rights” are a purpose to be achieved by the Organization and its Member States.³² Olivier De Schutter notes that the UDHR and the subsequent international human rights treaties³³ are a clarification of the obligations imposed by the UN Charter on the UN, constituted by its Member States, to promote “universal respect for, and observance of, human rights and fundamental freedoms for all.”³⁴ Human rights obligations extend to all subjects of international law, not only through treaty law but also as a component of general international law.³⁵ As detailed in this Commentary, a substantial and growing body of law supports the recognition of these obligations toward future generations, with the human rights of future generations emerging as a general principle of law.³⁶ Recognizing international human rights law as constituting concrete legal obligations toward future generations is reinforced by the approach adopted by the International Court of Justice, which emanates from Article 38 (1) of the Statute of the International Court of Justice.³⁷ This Article requires the Court to apply, amongst others, international conventions, international custom, and general principles of law.

(4) Articles 31 to 33 of the Vienna Convention on the Law of Treaties (VCLT) provide the authoritative rule for interpreting treaties, including human rights treaties.³⁸ Article 31 of the VCLT sets out the “[g]eneral rule of interpretation” dictating that a treaty must be interpreted “in good faith” and “in accordance with the ordinary meaning” of the terms of the treaty within their

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31. Gabčíkovo-Nagymaros Project (Hung. v. Slov.), Judgment, 1997 I.C.J. 7, 88, 106–10 (Sept. 25) (separate opinion by Weeramantry, J.); Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J., 226, ¶¶ 29, 35–36 (Jul. 8).
 32. U.N. Charter, *supra* note 28, pmb., ¶ 2, arts. 1(3), 56(c).
 33. There are nine core international human rights treaties: International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* Dec. 21, 1965, G.A. Res. 2106 (XX), U.N. GAOR, 20th Sess., 660 U.N.T.S. 195 (*entered into force* Jan. 4, 1969), *reprinted in* 5 I.L.M. 352 (1966) [hereinafter CERD]; ICCPR, *supra* note 14; ICESCR, *supra* note 14; Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 2263/7, U.N. GAOR, 34th Sess., U.N. Doc. A/34/46, 1249 U.N.T.S. 13. (*entered into force* Sept. 3, 1981) [hereinafter CEDAW]; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., U.N. Doc. A/39/51 (1985), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987) [hereinafter CAT]; CRC, *supra* note 12; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *adopted* Dec. 18, 1990, G.A. Res. 45/158, U.N. GAOR, 45th Sess., 69th plen. mtg., U.N. Doc. A/45/49 (1990) (*entered into force* Jul. 1, 2003) [hereinafter ICMW]; International Convention for the Protection of All Persons from Enforced Disappearance, *adopted* Dec. 20, 2006, U.N. GAOR, 61st Sess., U.N. Doc. A/RES/61/177 (*entered into force* Dec. 26, 2010) [hereinafter ICPPED]; Convention on the Rights of Persons with Disabilities, *adopted* Dec. 13, 2006, G.A. Res. 61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/RES/61/106 (2007) (*entered into force* May 3, 2008) [hereinafter CRPD].
 34. U.N. Charter, *supra* note 28, arts. 55(c), 56 (where the latter states that “all Members [of the United Nations] pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”); OLIVIER DE SCHUTTER, INTERNATIONAL HUMAN RIGHTS LAW: CASES, MATERIALS, COMMENTARY 123–28 (3d ed., 2019) (ebook).
 35. DE SCHUTTER, INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 34, at 123–34.
 36. *E.g.*, *Our Common Agenda: Policy Brief 1*, *supra* note 8, ¶¶ 9–12.
 37. Statute of the International Court of Justice art. 38(1)(a)–(c), Jun. 26, 1945, 3 Bevans 1179, 59 Stat. 1031, T.S. No. 993, 39 Am. J. Int’l L. Supp. 215 (1945), Cmd. 7015 (*entered into force* Oct. 21, 1945).
 38. Vienna Convention on the Law of Treaties, *adopted* May 23, 1969, U.N. Doc. A/CONF.39/27 (1969), 1155 U.N.T.S. 331 (*entered into force* Jan. 27, 1980), *reprinted in* 8 I.L.M. 679 (1969) [hereinafter VCLT]. See OLIVER DÖRR & K SCHMALENBACH EDS., VIENNA CONVENTION ON THE LAW OF TREATIES: A COMMENTARY 559–635 (2d ed., 2018) (ebook).

“context” and “in light of its object and purpose.” This Commentary illustrates that all the constitutive parts of Article 31, when considered in an integrated manner, together with the supplementary interpretive means established in Article 32 of the VCLT, allow for an interpretation that recognizes the human rights of future generations under international law. This interpretive approach is practiced by human rights bodies which typically follow a purposive and evolutive approach to treaty interpretation, which places a strong emphasis on incorporating both the intended goals and purposes, as well as the evolving circumstances surrounding a treaty during the interpretation process, alongside its textual and contextual elements.³⁹ Such an interpretive approach affirms that human rights treaties necessitate a response to “new, clear, potential, or actual threats that the changes occurring in the world pose . . . if the object and purpose of human rights law is not to be undermined.”⁴⁰ In his separate opinion in the International Court of Justice case *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judge Cançado Trindade emphasized:

International treaties and conventions are products of their time, and their interpretation and application *in time*, with a temporal dimension, bears witness that they are indeed living instruments.⁴¹

He emphasized the importance of the principle of intergenerational equity in the legal interpretation of international law—of which human rights form an integral part—urging its recognition to protect biodiversity and the environment for future generations.⁴²

(5) The interpretation of international human rights treaties requires reference to the internal and external contextual sources of treaties that recognize the human rights of future generations. In this respect, the historical circumstances of the treaties’ conclusion and the *travaux préparatoires* of treaties offer valuable insights into the extent to which human rights are intertemporal

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39. See, e.g., *General Comment No. 34: Freedoms of Opinion and Expression*, U.N. GAOR, Hum. Rts. Comm., 124th Sess., ¶ 50, U.N. Doc. CCPR/C/GC/36 (2019), Communication No. 1588/2007 (Benaziza v. Alg.), adopted Jul. 26, 2010, U.N. GAOR, Hum. Rts. Comm., 99th Sess., annex ¶ 23, U.N. Doc. CCPR/C/99/D/1588/2007 (2010); *General Comment No. 12: The Right to Adequate Food*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 20th Sess., ¶ 5, U.N. Doc. E/C.12/1999/5 (1999); *General Comment No. 25: Science and Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 67th Sess., ¶ 9, U.N. Doc. E/C.12/GC/25 (2020); *General Recommendation No. 30: Discrimination Against Non-Citizens*, U.N. GAOR, Comm. on Elim. Racial Discrim., 65th Sess., ¶ 8, U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004); *General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination*, U.N. GAOR, Comm. on Elim. Racial Discrim., 75th Sess., ¶ 5, U.N. Doc. CERD/C/GC/32 (2009); *General Recommendation No. 25: On Temporary Special Measures*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 30th Sess., ¶¶ 3, 4, 10, U.N. Doc. CEDAW/C/GC/25 (2004); *General Recommendation No. 39: The Rights of Indigenous Women and Girls*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 83d Sess., ¶ 16, U.N. Doc. CEDAW/C/GC/39 (2022); *General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment*, U.N. GAOR, Comm. on Rts. Child, 42d Sess., ¶ 4, U.N. Doc. CRC/C/GC/8 (2006); *General Comment No. 14: The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration*, U.N. GAOR, Comm. on Rts. Child, 62d Sess., ¶ 7, U.N. Doc. CRC/C/GC/14 (2013); Request for Advisory Opinion by the African Committee of Experts on the Rights and Welfare of the Child, Advisory Opinion, No. 002/2013, Afr. Ct. H.P.R., 1 Afr. Ct. L. Rep. 725, ¶ 92 (Dec. 5, 2014); *Wemhoff v. Ger.*, App. No. 2122/64, 27 Eur. Ct. H.R. 19, ¶ 8 (1968); *Maire v. Port.*, App. No. 48206/99, Eur. Ct. H.R., ¶ 72 (2003); *Bronstein v. Peru*, Competence, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 54, ¶¶ 39–40 (Sept. 24, 1999); *González v. Mex.*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 31–77 (Nov. 16, 2009).
40. Cecilia M. Quirogo, *The Role of International Tribunals: Law-Making or Creative Interpretation?*, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW 649, 655 (Dinah Shelton ed., 2013).
41. *Whaling in the Antarctic (Austl. v. Japan: N.Z. intervening)*, Judgment, 2014 I.C.J. 226, 384, ¶ 34 (Mar. 31) (separate opinion by Cançado Trindade, J.) (emphasis in original).
42. *Id.* ¶¶ 41–47, 88–90.

guarantees with future generations considered during the drafting processes.⁴³ Relevant *travaux préparatoires* from various human rights instruments and treaties provide evidence that human rights were intended to apply to future generations.⁴⁴ A prominent example is the consideration given by the Drafting Committee of the UDHR that stated the following:

By expressing the general opinion of the Members of the United Nations on the protection of human rights in the Declaration, the Commission would create a framework for the provisions of the Covenant designed to defend those rights and to ensure that future generations would enjoy them.⁴⁵

(6) Human rights instruments and treaties must also be considered as a whole, utilizing their preambles to inform the systematic construction and interpretation of treaties.⁴⁶ The preambles to human rights treaties and instruments emphasize the interdependence of all rights and freedoms and restate the UNDHR's recognition that "the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."⁴⁷

(7) The VCLT further stipulates in Article 32 (2) (b) that it is necessary to take into account, together with the context, "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."⁴⁸ This may encompass the subsequent authoritative interpretation and application of treaties by supervisory human rights bodies elected by States,⁴⁹ and by States Parties themselves (for example through resolutions of the UN General Assembly and Human Rights Council) that have recognized the human rights of

43. VCLT, *supra* note 38, art. 32. The preparatory works and the historical circumstances of human rights treaties are, by logical implication, part of the general rule of interpretation because they provide insight into the context and object and purpose of the treaty. See SISAY A. YESHANEW, *THE JUSTICIABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE AFRICAN REGIONAL HUMAN RIGHTS SYSTEM: THEORY, PRACTICE, PROSPECT* 28–29 (2013); EIRIK BJORGE, *THE EVOLUTIONARY INTERPRETATION OF TREATIES* 76–139 (2014).

44. WILLIAM A. SCHABAS ED., *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: THE TRAVAUX PRÉPARATOIRES* 1643, 2551, 1842–43, 2719 (2013); with reference to the ICCPR (and its First Optional Protocol), *supra* note 14, see U.N. GAOR, 21st Sess., 3rd comm., 1438th mtg. at 361, ¶ 12, 364, ¶ 46, U.N. Doc A_C-3_SR-1438 (Nov. 29, 1966); Ben Saul, *1496th Plenary Meeting, Draft International Covenants on Human Rights: Report of the Third Committee (A/6546)*, A/PV.1495 (16 December 1966), in *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: TRAVAUX PRÉPARATOIRES*, VOL. II., 2543, ¶¶ 24, 26, 2555, ¶ 119 (Ben Saul ed., 2016) (ebook); CHRISTOF HEYNS, *HUMAN RIGHTS LAW IN AFRICA* 226 (2004); Resolution on Mercenaries, pmb., ¶ 3, O.A.U. Res. 49(IV) (Sept. 11–14, 1967).

45. SCHABAS, *UDHR TRAVAUX*, *supra* note 44, at 1643.

46. VCLT, *supra* note 38, art. 31(2)–(3); Gerald G. Fitzmaurice, *The Law and Procedure of the International Court of Justice: Treaty Interpretation and Certain Other Treaty Points*, 28 Brit. Y.B. Int'l L. 1, 10 (1951); Max H. Hulme, *Preambles in Treaty Interpretation*, 164 U. Pa. L. Rev. 1282–343 (2016).

47. See, e.g., UDHR, *supra* note 29, pmb., ¶¶ 1–2; ICCPR, *supra* note 14, pmb., ¶¶ 1, 3; ICESCR, *supra* note 14, pmb., ¶¶ 1, 3.

48. VCLT, *supra* note 38, art. 31(3)(b).

49. Depending on the institutional and legal architecture of the treaty body, it may include decisions, general comments, recommendations, statements, resolutions, and communications from the interpretative organs, as well as the further development of other international and regional human rights instruments flowing from the International Bill of Rights that recognize the human rights of future generations. See, e.g., *Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, with Commentaries*, [2018] 2 Y.B. Int'l L. Comm'n 11, Concls. 8, 13, cmt. at 64–70, 106–16, U.N. Doc. A/73/10; G.A. Res. 58/165, *International Covenants on Human Rights*, U.N. GAOR, 58th Sess., Agenda Item 117(a), ¶ 24, U.N. Doc. A/RES/58/165 (Mar. 4, 2004); *Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies*, Int'l L. Ass'n, 71st Conf., 23 (2004); *Whaling in the Antarctic* (separate opinion by Cañado Trindade, J.), 2014 I.C.J. at 348, ¶ 34; Martin Scheinin, *Impact on the Law of Treaties, in THE IMPACT OF HUMAN RIGHTS LAW ON GENERAL INTERNATIONAL LAW* 23, 33 (Menno T. Kamminga & M Scheinin eds., 2009); Kerstin Mechlem, *Treaty Bodies and the Interpretation of Human Rights*, 42 Vand. J. Transnat'l L. 905, 919 (2009); RICHARD K. GARDINER, *TREATY INTERPRETATION* 223–88 (2d ed., 2015).

future generations. Regarding the latter, the human rights of future generations have been explicitly recognised by both the UN Human Rights Council and the General Assembly.⁵⁰ Notably, in UN General Assembly Resolution 76/300 States Parties recognized that “sustainable development in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the full enjoyment of all human rights, for present and future generations.”⁵¹ Resolution 76/300 further recognizes that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life.”⁵² In addition to these formal legal recognitions, several independent experts appointed by States in the UN Human Rights Council—while not having a formal role in interpreting treaties⁵³—have articulated norms and standards that refer to the human rights of future generations and offer important persuasive interpretations of these rights as contained in various instruments.⁵⁴

(8) In applying and extending legal principles, jurists have also long looked beyond the “formalism of modern legal systems” to broader domains of custom, practice, and tradition.⁵⁵ Judge Weeramantry of the International Court of Justice, in his separate opinion in *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, emphasized the importance of seeking guidance and

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50. H.R.C. Res. 48/13, *The Human Right to a Clean, Healthy and Sustainable Environment*, adopted Oct. 8, 2021, U.N. H.R.C., 48th Sess., ¶¶ 6, 10, U.N. Doc. A/HRC/RES/48/13 (2021).
 51. G.A. Res. 76/300, *The Human Right to a Clean, Healthy and Sustainable Environment*, adopted Jul. 28, 2022, U.N. GAOR, 76th Sess., pmb. ¶ 7, U.N. Doc. A/RES/76/300 (2022).
 52. *Id.* ¶ 12.
 53. For the persuasive interpretive value of the outputs of Special Rapporteurs in elaborating on norms contained in human rights treaties, see Surya P. Subedi et al., *The Role of the Special Rapporteurs of the United Nations Human Rights Council in the Development and Promotion of International Human Rights Norms*, 15 *Int'l J. Hum. Rts.* 155–61 (2011); Allehone M. Abebe, *Special Rapporteurs as Law Makers: The Developments and Evolution of the Normative Framework for Protecting and Assisting Internally Displaced Persons*, 15 *Int'l J. Hum. Rts.* 286–98 (2011); Christophe Golay et al., *The Impact of the UN Special Procedures on the Development and Implementation of Economic, Social and Cultural Rights*, 15 *Int'l J. Hum. Rts.* 299–318 (2011).
 54. *E.g.*, *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Sustainability in the Realization of the Human Rights to Water and Sanitation, Catarina de Albuquerque*, U.N. H.R.C., 24th Sess., Agenda Item 3, ¶ 21, U.N. Doc. A/HRC/24/44 (2013); *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Taxation Policies, Magdalena Sepúlveda Carmona*, U.N. H.R.C., 26th Sess., Agenda Item 3, ¶ 70, U.N. Doc. A/HRC/26/28 (2014); *Report of the Special Rapporteur on Freedom of Religion or Belief, Elimination of All Forms of Religious Intolerance, Heiner Bielefeldt*, U.N. GAOR, 70th Sess., Agenda Item 73(b), ¶ 43, U.N. Doc. A/70/286 (2015); *Report of the Special Rapporteur in the Field of Cultural Rights, Intentional Destruction of Cultural Heritage, Karima Bennouna*, U.N. GAOR, 71st Sess., Agenda Item 68(b), ¶¶ 6, 7, 35, 65, 76, U.N. Doc. A/71/317 (2016); *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Climate Change and Poverty, Philip Alston*, U.N. GAOR, 41st Sess., Agenda Item 3, ¶¶ 1, 23, 25, U.N. Doc. A/HRC/41/39 (2019); *Report of the Special Rapporteur on Climate Change and Human Rights, Mitigation, Loss and Damage, and Participation, Ian Fray*, U.N. GAOR, 77th Sess., Agenda Item 74(b), ¶ 1, U.N. Doc. A/77/226 (2022); *Report of the Special Rapporteur on Adequate Housing, Towards a Just Transformation: Climate Crisis and the Right to Housing, Balakrishnan Rajagopal*, U.N. GAOR, 52d Sess., Agenda Item 3, ¶ 5, U.N. Doc. A/HRC/52/28 (2022); *Report of the Special Rapporteur on the Right to Development, Right to Development of Children and Future Generations, Surya Deva*, U.N. H.R.C., 57th Sess., Agenda Item 3, U.N. Doc. A/HRC/57/43 (2024).
 55. *Gabčíkovo-Nagymaros Project* (separate opinion by Weeramantry, J.), 1997 I.C.J. 7, 109. See also Margaretha Wewerinke-Singh et al., *In Defence of Future Generations: A Reply to Stephen Humphreys*, 34 *Eur. J. Int'l L.* 651, 653–57 (2023) (on the importance of drawing on Indigenous Peoples’ worldviews in interpreting international law as it pertains to future generations); César Rodríguez-Garavito, *Globalising the Indigenous: The Making of International Human Rights From Below, in THE COMPLEXITY OF HUMAN RIGHTS: FROM VERNACULARIZATION TO QUANTIFICATION* 75–92 (Philip Alston ed., 2024) (on Indigenous Peoples’ contribution through mobilization in the international recognition of the rights of Nature, the limits to current developmental models, and the rights of future generations).

insight from ancient practice, traditional wisdom, and a wide variety of religious and belief systems when interpreting and applying established legal principles in new contexts or to new concepts, particularly with regard to sustainable development, which has a strong intertemporal dimension.⁵⁶ He held that an embrace of a blend of written, traditional, and Indigenous concepts as part of the “living law” is imperative “at a time when . . . harmony between humanity and its planetary inheritance is a prerequisite for human survival.”⁵⁷ In addition, the range of treaties outside the human rights field, including those on the protection of the environment and cultural heritage that recognize obligations toward future generations and the need to ensure intergenerational equity, must also be considered under a holistic human rights protection regime.⁵⁸

(9) Human rights treaties must further be interpreted in accordance with the principle of effectiveness, which necessitates an interpretation that aligns the object and purpose of the treaty with its provisions as a whole and in their context to ensure the treaty is “effective, real, and practical” for rights holders.⁵⁹ The principle of effectiveness promotes an interpretation that ensures a treaty’s internal and external effectiveness is maintained.⁶⁰ This approach seeks to align the interpretation of individual provisions with the overall internal structure of the treaty, as well as with the broader external framework of general international law in which human rights are embedded.⁶¹ Principle 2 thus adopts an inclusive approach to the various forms and sources of international law to ensure that the international human rights protection system is not interpreted, applied, and enforced in a fragmented manner. Such fragmentation could undermine the prospects of effectively realizing human rights across generations.

Rights of future generations under human rights treaties

(10) A growing number of human rights supervisory treaty bodies have now expressly interpreted their treaties as encompassing future generations in the context of a wide range of human rights. The Human Rights Committee, overseeing the International Covenant on Civil and Political Rights (ICCPR), has indicated in General Comment 36 on the right to life that future generations

56. *Gabčíkovo-Nagymaros Project* (separate opinion by Weeramantry, J.), 1997 I.C.J. 7, 96–110.

57. *Id.* at 109–10.

58. VCLT, *supra* note 38, art. 31(3)(c) (stating that “any relevant rules of international law applicable in the relations between the parties” must be taken into account together with the context).

59. Başak Çalı, *Specialized Rules of Treaty Interpretation: Human Rights*, in THE OXFORD GUIDE TO TREATIES 504, 512–16 (Duncan B. Hollis ed., 2d ed., 2020). See also Hersch Lauterpacht, *Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties*, 26 Brit. Y.B. Int’l L. 48–85 (1949); Gerald G. Fitzmaurice, *The Law and Procedure of the International Court of Justice 1951–4: Treaty Interpretation and Other Treaty Points*, 28 Brit. Y.B. Int’l L. 203, 211 (1957); Georgios A. Serghides, *The Principle of Effectiveness in the European Convention on Human Rights, in Particular its Relationship to the Other Convention Principles*, in Hague Y.B. Int’l L. 1–15 (Jure Vidmar et al. eds., 2019); Communication No. 155/96 (Social and Economic Rights Action Centre (SERAC) v. Nigeria), Afr. Comm’n H.P.R., Afr. Hum. Rts. L. Rep. 60, ¶ 68 (2001); *González v. Mex.*, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 77 (2009).

60. Daniel Rietiker, *The Principle of “Effectiveness” in the Recent Jurisprudence of the European Court of Human Rights: Its Different Dimensions and Its Consistency with Public International Law – No Need for the Concept of Treaty Sui Generis*, 79 Nordic J. Int’l L. 245, 256 (2010).

61. *E.g.*, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16, 31, ¶ 53 (held that a treaty should be interpreted in light of other relevant international legal sources and instruments).

are also entitled to the right to life.⁶² The Committee on Economic, Social and Cultural Rights, the supervisory organ of the International Covenant on Economic, Social and Cultural Rights (ICESCR), has recognized that the economic, social and cultural rights (ESCRs) under the Covenant must be realized sustainably to ensure that these rights are fulfilled for both present and future generations, including the rights to food,⁶³ water,⁶⁴ and social security.⁶⁵ Furthermore, the Committee has stressed that various dimensions of the right to culture and cultural heritage “must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations.”⁶⁶ In General Comment 25 on science and economic, social and cultural rights, the Committee emphasized the importance of avoiding or mitigating risks associated with scientific processes and their applications to prevent harm, including when “it is inequitable to present or future generations.”⁶⁷ The Committee has also made it clear that States Parties should identify marginalized and disadvantaged groups as well as “systemic forms of discrimination or social exclusions that perpetuate inter-generational poverty” to ensure the enjoyment of Covenant rights.⁶⁸ Other supervisory bodies overseeing international human rights treaties dedicated to specific groups have also addressed the human rights of future generations.

(11) The Committee on the Elimination of Discrimination against Women, overseeing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), has addressed human rights issues such as statelessness and poverty, noting that these issues can be perpetuated “from generation to generation” among women and girls.⁶⁹ The Committee has further pointed out that when girls and women lack access to quality education, they face significant difficulties, including “lower quality healthcare for themselves and their children,” leading to a “cycle of intergenerational poverty.”⁷⁰ In its General Recommendation on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee stated that climate change affects everyone, but “people living in poverty, young people and future generations” are the most susceptible to its effects.⁷¹ In its General Recommendation on Indigenous women and girls, the Committee highlighted discriminatory laws that inhibit Indigenous women from transmitting their Indigenous status, resulting in

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62. *General Comment No. 36: The Right to Life*, U.N. GAOR, Hum. Rts. Comm., 124th Sess., ¶ 62 U.N. Doc. CCPR/C/GC/36 (2018) confirmed in Communication No. 2728/2016 (Teitiota v. N.Z.), adopted Jan. 7, 2020, U.N. GAOR, Hum. Rts. Comm., 127th Sess., annex ¶ 4, U.N. Doc. CCPR/C/127/D/2728/2016 (2020).
 63. *General Comment No. 12*, supra note 39, ¶ 7.
 64. *General Comment No. 15: The Right to Water*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 29th Sess., ¶¶ 11, 13, U.N. Doc. E/C.12/2002/11 (2002).
 65. *General Comment No. 19: The Right to Social Security*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 39th Sess., ¶ 11 U.N. Doc. E/C.12/GC/19 (2008).
 66. *General Comment No. 21: The Right of Everyone to Take Part in Cultural Life*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 43d Sess., ¶ 50, U.N. Doc. E/C.12/GC/21 (2009).
 67. *General Comment No. 25*, supra note 39, ¶ 56.
 68. *Statement: The Pledge to Leave No One Behind: The International Covenant on Economic, Social and Cultural Rights and the 2030 Agenda for Sustainable Development*, adopted Apr. 5, 2019, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 65th Sess., ¶ 12(a), U.N. Doc. E/C.12/2019/1 (2019).
 69. *General Recommendation No. 32: Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 61st Sess., ¶ 54, U.N. Doc. CEDAW/C/GC/32 (2014).
 70. *General Recommendation No. 36: The Right of Girls and Women to Education*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 71st Sess., ¶ 28, U.N. Doc. CEDAW/C/GC/36 (2017).
 71. *General Recommendation No. 37: Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 72d Sess., ¶¶ 19, 21 U.N. Doc. CEDAW/C/GC/37 (2018).

“transgenerational discrimination.”⁷² Notably, the Committee also elaborated on the “intergenerational harm” that flows from the widespread forms of gender-based violence against Indigenous women and girls.⁷³

(12) The human rights body monitoring the Convention on the Rights of the Child (CRC), the Committee on the Rights of the Child, has also elaborated on the intergenerational dimensions of realizing children’s rights in several of its General Comments. In the General Comment on the right of the child to freedom from all forms of violence, the Committee indicated that “[p]reventing violence in one generation reduces its likelihood in the next.”⁷⁴ In the General Comment concerning State obligations regarding the impact of the business sector on children’s rights, the Committee asserted that violations of children’s rights “may have lifelong, irreversible and even transgenerational consequences.”⁷⁵ Importantly, in the General Comment on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, the Committee encouraged States Parties to take steps to eliminate the “loss of many childhood games, songs, rhymes, traditionally transmitted from generation to generation on the street and in the playground.”⁷⁶ The Committee’s General Comment on public budgeting for the realization of children’s rights in the section on “sustainability” also noted that the “best interests of current and future generations of children should be given serious consideration in all budget decisions.”⁷⁷ Finally, the General Comment on children’s rights and the environment with a special focus on climate change, endorsed the principle of intergenerational equity, affirming the obligation to realize the rights of “children constantly arriving.”⁷⁸

(13) On a regional level, the human rights of future generations are also implicitly or explicitly recognized under regional human rights treaties. The African Youth Charter, in Article 19 on Sustainable Development and Protection of the Environment, provides that “States Parties shall ensure the use of sustainable methods to improve the lives of young people such that measures instituted do not jeopardize opportunities for future generations.”⁷⁹ Article 1 (3) of the Arab Charter on Human Rights stipulates that the Charter’s aim is to “prepare the new generations in Arab States for a free and responsible life in a civil society that is characterized by solidarity, founded on a balance between awareness of rights and respect for obligations, and governed by the values of equality, tolerance and moderation.”⁸⁰ The Inter-American Court of Human Rights has also recognized the human rights of future generations regarding Indigenous Peoples’

72. Comm. on Elim. Discrim. Against Women, *General Recommendation No. 39*, *supra* note 39, ¶ 21.

73. *Id.* ¶ 40.

74. *General Comment No. 13: The Right of the Child to Freedom from All Forms of Violence*, U.N. GAOR, Comm. on Rts. Child, 56th Sess., ¶¶ 14, 75(b), U.N. Doc. CRC/C/GC/13 (2011).

75. *General Comment No. 16: State Obligations Regarding the Impact of the Business Sector on Children’s Rights*, U.N. GAOR, Comm. on Rts. Child, 62d Sess., ¶ 4, U.N. Doc. CRC/C/GC/16 (2013).

76. *General Comment No. 17: The Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts*, U.N. GAOR, Comm. on Rts. Child, 62d Sess., ¶ 46, U.N. Doc. CRC/C/GC/17 (2013).

77. *General Comment No. 19: Public Budgeting for the Realization of Children’s Rights*, U.N. GAOR, Comm. on Rts. Child, 73d Sess., ¶ 63, U.N. Doc. CRC/C/GC/19 (2016).

78. *General Comment No. 26: Children’s Rights and the Environment with a Special Focus on Climate Change*, U.N. GAOR, Comm. on Rts. Child, 93d Sess., ¶¶ 11, 32, U.N. Doc. CRC/C/GC/26 (2023).

79. African Youth Charter, *supra* note 13.

80. Arab Charter on Human Rights art. 1(3), May 22, 2004, U.N. Doc. CHR/NONE/2004/40/Rev.1, GE.04-14687 (E) 300604 010704, *reprinted in* 12 Int’l Hum. Rts. Rep. 893 (2005) [hereinafter Arab Charter on Human Rights].

territorial rights.⁸¹ For instance, in *Awas Tingni Community v. Nicaragua*, the Court confirmed the interconnections between land and culture and its intergenerational importance for Indigenous communities.⁸² In its Advisory Opinion on the environment and human rights, the Inter-American Court of Human Rights held that “the right to a healthy environment constitutes a universal value that is owed to both present and future generations.”⁸³ The Court opined that “[e]nvironmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.”⁸⁴ In *Habitantes de La Oroya v. Peru*, the Court recognized, citing the Maastricht Principles on Future Generations, that “the rights of future generations impose the obligation on States to respect and guarantee the enjoyment of the human rights of girls and boys, and to refrain from any conduct that endangers their rights in the future.”⁸⁵

Obligations toward future generations recognized outside of human rights treaties

(14) As clarified above, when interpreting human rights treaties, it is essential to consider a range of relevant treaties outside the human rights field, including treaties on the protection of the environment, natural resources, and cultural heritage. A significant number of international instruments dedicated to the protection of the environment, natural resources, and cultural heritage include explicit references to intergenerational equity, responsibilities toward, and the rights of future generations.⁸⁶ When these instruments are considered collectively, they hold that States have “moral obligations”⁸⁷ and responsibilities to future generations.⁸⁸ This broader consideration of international law thus supports an interpretation of human rights treaties that includes the rights of future generations.

Instruments on the protection of the environment, natural resources, and cultural heritage

(15) The Preamble to the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) underscores that the “deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful

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81. American Convention on Human Rights art. 21, signed Nov. 22, 1969, O.A.S. Doc. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1979), O.A.S.T.S. No. 36, 1144 U.N.T.S. 143 (entered into force July 18, 1978) [hereinafter American Convention on Human Rights].
 82. *Awas Tingni Community v. Nicar.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 141 (Aug. 31, 2001).
 83. Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., ¶ 59.
 84. *Id.*
 85. *Habitantes de La Oroya v. Peru*, Preliminary Objections, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 141 (Nov. 27, 2023) (unoff. transl.). See also *id.* ¶¶ 128–29, 177, 243.
 86. Beginning no later than the adoption of the 1935 Roerich Pact and Banner of Peace Convention for the protection of cultural heritage during wartime. See The Roerich Pact and Banner of Peace Committee, Banner of Peace: Third International Convention for Roerich Pact and Banner of Peace, Nov. 17–18, 1933, 3, 36 (1947).
 87. *Intergenerational Solidarity and the Needs of Future Generations*, U.N. Doc. A/68/322, ¶¶ 33–35 (2013).
 88. See, e.g., Report of the World Commission on Environment and Development: Our Common Future princ. 2, U.N. GAOR, 42d Sess., Agenda Item 83(e), annex 1, U.N. Doc. A/42/427 (1987) [hereinafter 1987 Brundtland Report]; Declaration on the Responsibilities of the Present Generations Towards Future Generations, adopted Nov. 12, 1997, Res. 29C/44, U.N. Educ., Sci. & Cultural Org. (UNESCO) Gen. Conf., 27th plen. mtg. (1997) [hereinafter UNESCO Declaration on Future Generations]; UNESCO Declaration of Ethical Principles in Relation to Climate Change arts. 4(2), 5, 6(2), 11(1), adopted Nov. 13, 2017, Res. 39C/70, UNESCO Gen. Conf., 39th Sess. (2017).

impoverishment of the heritage of all the nations of the world.”⁸⁹ This Convention mandates that each State Party has “the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage.”⁹⁰ The 2002 Budapest Declaration on World Heritage further emphasizes this duty, recognizing that “properties on the World Heritage List are assets held in trust to pass on to generations of the future as their rightful inheritance,” and that the members of the World Heritage Committee “join to co-operate in the protection of heritage, recognizing that to harm such heritage is to harm, at the same time, the human spirit and the world’s inheritance.”⁹¹ The 2024 UN Declaration on Future Generations commits States to:

Honour, promote and preserve cultural diversity and cultural heritage, as well as languages, knowledge systems and traditions, and foster intercultural and interreligious dialogue, including through encouraging strengthened international cooperation on the return or restitution of cultural properties of spiritual, ancestral, historical and cultural value to countries of origin.⁹²

(16) The intergenerational aspect of environmental protection has been consistently acknowledged in numerous international environmental declarations and agreements over the past several decades.⁹³ For example, the 1972 Declaration of the UN Conference on the Human Environment in Stockholm (1972 Stockholm Declaration) establishes a “responsibility to protect and improve the environment for present and future generations.”⁹⁴ Similarly, the 1975 Convention on International Trade in Endangered Species of Wild Fauna and Flora recognizes in its preamble that fauna and flora must be “protected for this and the generations to come.”⁹⁵ The preambles of both the 1992 Convention on Biological Diversity and the 1992 Convention to Combat Desertification express a collective duty to conserve and sustainably use biological diversity and to combat desertification and mitigate droughts “for the benefit of present and future generations.”⁹⁶ The 1992 Rio Declaration on Environment and Development also affirms the need to “equitably meet developmental and environmental needs of present and future generations.”⁹⁷ Furthermore, the 1994 UN Framework Convention on Climate Change (UNFCCC) explicitly refers to future generations in its preamble and centers intergenerational equity as one of the Convention’s guiding principles.⁹⁸ Pursuant to the objectives of the UNFCCC, the 2015 Paris Agreement on Climate Change (Paris Agreement) acknowledges

89. Convention Concerning the Protection of the World Cultural and Natural Heritage pmb. ¶ 2, adopted Nov. 16, 1972, UNESCO 17th Sess., 1037 U.N.T.S. 151 (entered into force Dec. 17, 1975) [hereinafter World Heritage Convention].

90. *Id.* arts. 4, 6.

91. Budapest Declaration on World Heritage ¶¶ 2, 3(d), 5, adopted June 28, 2002, UNESCO 20th Sess., WHC-02/CONF.202/5 (2002).

92. 2024 UN Declaration on Future Generations, *supra* note 8, commit. 15.

93. *See also id.* guid. princ. 5, commit. 18.

94. Declaration of the United Nations Conference on the Human Environment princ. 1, adopted June 16, 1972, U.N. Doc. A/CONF.48/14/Rev.1. (1973) [hereinafter 1972 Stockholm Declaration].

95. Convention on International Trade in Endangered Species of Wild Fauna and Flora pmb. ¶ 1, adopted Mar. 3, 1973, 993 U.N.T.S. 243 (entered into force Jul. 1, 1975).

96. U.N. Convention on Biological Diversity pmb. ¶ 23, adopted June 5, 1992, 1760 U.N.T.S. 79 (entered into force Dec. 29, 1993) [hereinafter Convention on Biological Diversity]; U.N. Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa pmb. ¶ 26, adopted Oct. 14, 1994, 1954 U.N.T.S. 3 (entered into force Dec. 26, 1996) [hereinafter Convention to Combat Desertification].

97. U.N. Rio Declaration on Environment and Development princ. 3, U.N. Doc. A/CONF.151/26 (Vol. I) (Aug. 12, 1992) [hereinafter Rio Declaration on Environment and Development].

98. U.N. Framework Convention on Climate Change pmb. ¶ 2, art. 3(1), adopted May 9, 1992, 1771 U.N.T.S. 107 (entered into force Mar. 21, 1994) [hereinafter UNFCCC].

climate change as “a common concern of humankind” and recognizes Parties’ obligations to integrate intergenerational equity and human rights into their actions.⁹⁹ The Paris Agreement highlights the rights to health and development, the rights of Indigenous Peoples, local communities, migrants, children, and persons with disabilities, while further underscoring the importance of gender equality.¹⁰⁰

Future generations under the governance of nuclear energy and waste

(17) From the onset of the development of nuclear weapons, energy, and waste, it has been documented that the impacts and risks of nuclear materials can extend far beyond the lifetimes of those who deploy them, reaching infinitely into the future. This concern has generated both a need and a responsibility for States and other actors alike to consider whether and how those impacts can and should be addressed. In its 1996 Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice held that “the use of nuclear weapons would be a serious danger to future generations.”¹⁰¹ The Advisory Opinion further emphasized that ionizing radiation has the potential to harm the future environment, food supply, and marine ecosystems and can “cause genetic defects and illness in future generations.”¹⁰²

(18) The International Atomic Energy Agency’s (IAEA) 1995 Principles of Radioactive Waste Management (IAEA 1995 Principles) indicated that the objective of “radioactive waste management is to deal with radioactive waste in a manner that protects human health and the environment now and in the future without imposing undue burdens on future generations.”¹⁰³ Although the IAEA’s 1995 Principles have since been superseded and arguably diluted by a more recent set of Fundamental Safety Principles adopted by IAEA members in 2006, the latter principles continue to recognize the intergenerational dimensions of nuclear waste.¹⁰⁴ Principle 7 declares that “[p]eople and the environment, present and future, must be protected against radiation risks.” Principle 7 also reiterates that possible consequences of radiation, “now and in the future,” must be taken into account when determining the adequacy of control measures and further codifies the obligation to avoid placing undue burdens on future generations.¹⁰⁵ Similarly, the 2017 UN Treaty on Prohibition of Nuclear Weapons recognizes that the devastating effects of nuclear weapons extend beyond national boundaries and carry severe implications for the existence of humanity, the environment, global financial stability, food security, and the “health

99. Climate Change Paris Agreement pmb. ¶¶ 3, 11, *adopted* Dec. 12, 2015, T.I.A.S. No. 16-1104, 55 I.L.M. 740 (*entered into force* Nov. 4, 2016) [hereinafter Paris Agreement].

100. *Id.* ¶ 11.

101. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J., at 244, ¶ 35.

102. *Id.*

103. Int’l Atomic Energy Agency, Principles of Radioactive Waste Management princs. 4–5, I.A.E.A. Doc. IAEA/WM/PRWM/1995 (1995). See also Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management arts. 1(ii), 4(vi)–(vii), 11(vi)–(vii), *adopted* Sept. 5, 1997, 2153 U.N.T.S. 357 (*entered into force* June 18, 2001) [hereinafter Spent Fuel and Radioactive Waste Safety Convention]; Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region pmb. ¶ 1, *adopted* Sept. 16, 1995, 2161 U.N.T.S. 93 (*entered into force* Oct. 21, 2001).

104. Int’l Atomic Energy Agency, Fundamental Safety Principles, IAEA Safety Standards Series No. SF-1 (2006).

105. *Id.* princ. 7, § 3.29.

of current and future generations.”¹⁰⁶ This treaty further highlights the significance of education concerning peace and disarmament, necessitating awareness-raising of the dangers and consequences of nuclear weapons for “current and future generations.”¹⁰⁷ Actions 25 and 26 of the 2024 Pact for the Future also advance the “goal of a world free of nuclear weapons” and commit to “accelerate the full and effective implementation of respective nuclear disarmament and non-proliferation obligations and commitments.”¹⁰⁸

General principles of law and the customary practice of nations

(19) Countries from all regions of the world have explicitly recognized, either in their constitutions and legislative enactments or through judicial interpretation of such instruments, the rights of future generations and obligations on States to ensure intergenerational equity. Many States also provide for entrenched intergenerational duties of trusteeship of natural and cultural resources, as discussed under the Commentary on Principle 8.

Rights of future generations in national constitutions and legal systems

(20) Forty-one percent of constitutions worldwide provide explicit protection for future generations.¹⁰⁹ These protections are often reinforced through legislation that imposes duties on States to preserve and protect natural resources, cultural heritage, and the financial and economic security of future generations. Beyond these constitutional protections and legislative measures, courts around the globe continue to play a pivotal role in affirming the intergenerational dimension of human rights through their judicial decisions. Illustrative examples of relevant jurisprudence are highlighted below.¹¹⁰

(21) In the Philippines, *Minors Oposa v. Factoran* marked a significant moment in the recognition of the rights of future generations.¹¹¹ Brought on behalf of children against the government, the

106. U.N. Treaty on the Prohibition of Nuclear Weapons pmb. ¶¶ 2, 3, *opened for signature* Jul. 7, 2017, 72, U.N. GAOR, Supp. No. 49, U.N. Doc. A/CONF.229/2017/8 (*entered into force* Jan. 22, 2021) [hereinafter Treaty on the Prohibition of Nuclear Weapons].

107. *Id.* pmb. ¶ 23.

108. 2024 Pact for the Future, *supra* note 16, actns. 25–26.

109. Rui T.N. Araújo & Leandro Koessler, *The Rise of the Constitutional Protection of Future Generations* (L.P.P. Working Paper Ser. No. 7, 2021) (these constitutions cover a wide range of legal traditions, including common law, civil law, Muslim and Sharia law, mixed legal systems, Indigenous Peoples laws, and Asian legal traditions); 2024 UN Declaration on Future Generations, *supra* note 8, pmb. ¶ 4. See, e.g., Constituição da República de Angola art. 39, 2010; Constitución Nacional [Const. Nat’l.] art. 41 (Arg.), as amended by 1994 Reform; Constituição Federal [C.F.] art. 225 (Braz.), as amended by Emenda Constitucional [EC] No. 96, de 6 de junho de 2017; Constitución de la República de Cuba art. 27, 1976, as amended by Reforma Constitucional, 2002; Egypt Const. art. 32, 2014; Constitución Política del Estado art. 7, 2009 (Bol.); Charter for the Environment pmb., Const. of Oct. 4, 1958 (Fr.) [Fr. Const.], as amended by Const. L. No. 2005-205 of Mar. 1, 2005; Iran Const. art. 50, 1979; Malawi Const. art. 13, 1994; Kenya Const. art. 42, 2010; Zimbabwe Const. § 73, Amendment (No. 20) 2013; Morocco Const. art. 35, 2011; S. Afr. Const. § 24, 1996; Norway Const. art. 112, 1814; Regeringsformen [RF] [Instrument of Government] art. 2 (Swed.), as amended by Lag om ändring i regeringsformen [SFS 2010:1408]; Bundesverfassung [BV] [Const.] pmb. (Switz.), as amended by Fed. Decree, Sept. 26, 2014; Konstytucja Ukrainy [Ukr. Const.] pmb., as amended by L. No. 2680-VIII, Feb. 7, 2019.

110. See *also*, e.g., *Nzioka v. Tiomin Kenya Ltd.* (2001) K.L.R. 486 (H.C.K.) (Kenya); *Pulp Mills on the River Uruguay* (Arg. v. Uru.), Judgment, 2010 I.C.J. 14, ¶ 120 (Apr. 20) (separate opinion by Cançado Trindade, J.); *Leghari v. Pak.*, Lahore High Ct., W.P. No. 25501/2015 (2015); *Gloucester Resources Ltd. v. Min. for Planning* [2019] NSWLEC 7, ¶ 399 (Austl.); *Shrestha v. Off. of the Prime Min., Sup. Ct. Nepal*, Writ No. 070-WO-0289, Dec. No. 8972 (2020); *Kim v. S. Kor.*, 2020Hun-Ma389, 2021Hun-Ma1264, 2022Hun-Ma854, 2023Hun-Ma846 (S. Kor. Const. Ct. Aug. 29, 2024).

111. *Minors Oposa v. Factoran*, G.R. No. 101083, 224 SCRA 792 (Sup. Ct., July 30, 1993) (Phil.).

Supreme Court of the Philippines recognized children’s “right to a balanced and healthful ecology.”¹¹² The Court further held that the purpose of natural resource management is to ensure the equitable sharing of benefits from those resources “to the different segments of the present as well as future generations.”¹¹³ In this respect, the Court referred to the national environmental policy, which speaks of the “responsibilities of each generation as trustee and guardian of the environment for succeeding generations.”¹¹⁴

(22) In the context of the intergenerational transmission of the disadvantages brought about by the oppressive systems of colonialism and apartheid, the Constitutional Court of South Africa in *Azanian People’s Organization (AZAPO) v. President of South Africa* highlighted the intergenerational impact of these oppressive systems.¹¹⁵ The Court observed that multiple generations, both those born and those yet-to-be-born, will endure the lasting consequences of “poverty, of malnutrition, of homelessness, of illiteracy and disempowerment generated and sustained by the institutions of apartheid and its manifest effects on life and living for so many.”¹¹⁶ The Court emphasized the obligation on the State to deploy its resources “imaginatively, wisely, efficiently and equitably” to facilitate a democratic reconstruction process for those “burdened with the heritage of the shame and the pain of our racist past.”¹¹⁷

(23) The Supreme Court of Colombia, in its judgment in *Future Generations v. Colombia Ministry of the Environment*, ruled in favor of a large group of youth plaintiffs, asserting that the government’s failure to address climate change and deforestation in the Amazon violated the rights of both present and future generations to a healthy environment, life, health, food, and water.¹¹⁸ The Court held that the deforestation in the Amazon caused “short, medium, and long term imminent and serious damage to the children, adolescents and adults who filed this lawsuit, and in general, all inhabitants of the national territory, including both present and future generations.”¹¹⁹ Significantly, the Court stressed that the rights of “present and future generations” are based on ethical duties owed toward the rights of the Earth and all other beings.¹²⁰ The Court further underscored that the rights of future generations necessitate that present generations embrace “the care and stewardship of natural resources and the future world” to avoid the depletion of life-sustaining resources for future generations.¹²¹

(24) In the 2015 case of *Urgenda v. Netherlands*, a Dutch environmental group acting on behalf of present and future generations was successful in its claim in the Hague District Court, demanding the Dutch government do more to prevent global climate change.¹²² In 2019, the

112. *Id.* at 2.

113. *Id.* at 11–12. Relying on, inter alia, Admin. Code of the Phil., Bk. IV, Tit. XIV, § 1(1) (1987) (Phil.).

114. *Minors Oposa v. Factoran*, 224 SCRA at 11–13. Referring to Pres. Dec. No. 1151, Phil. Env’t Pol’y, § 2, 6 June 1977 (Phil.).

115. *Azanian People’s Org. (AZAPO) v. Pres. S. Afr.* 1996 (4) SA 671 (Const. Ct.) ¶ 43 (S. Afr.).

116. *Id.*

117. *Id.*

118. *Future Generations v. Colom. Min. of Env’t*, *supra* note 22, at 3. For an analysis, see Maria A. Tigre et al., *Climate Litigation in Latin America: Is the Region Quietly Leading a Revolution?*, 14 J. Hum. Rts. & Env’t 67, 89–90 (2023).

119. *Future Generations v. Colom. Min. of Env’t*, *supra* note 22, at 34.

120. *Id.* at 22.

121. *Id.* at 21.

122. *Urgenda v. Neth.*, ECLI:NL:RBDHA:2015:7145, Rb. Den Haag, C/09/456689/HA ZA 13–1396, ¶ 4.57 (Neth. June 24, 2015) (unoff. transl., <https://climatecasechart.com/wp-content/uploads/non-us-case->

Supreme Court confirmed the Hague District Court's ruling and ordered the State to limit its greenhouse gas emissions in accordance with the Dutch Constitution, the UNFCCC, and the European Convention on Human Rights.¹²³ The Court confirmed the Hague District Court's order that the Dutch government must institute measures to reduce the real and immediate risks that jeopardize the welfare of present and future generations, even if such impacts would only materialize a few decades from now.¹²⁴

(25) The Federal Constitutional Court of Germany, in its 2020 decision in *Neubauer v. Germany*, similarly held that Germany's legislative targets of reducing greenhouse gas emissions were insufficient to secure a right to a future based on the rights to human dignity and life and physical integrity, as interpreted in conjunction with Article 20a of Germany's Basic Law, which binds the State to protect the natural foundations of life as a responsibility owed to future generations.¹²⁵ The Court held that Article 20a of the Basic Law not only obligates the legislature to protect the climate and aim toward achieving climate neutrality, but "also concerns how environmental burdens are spread out between different generations."¹²⁶ The Court stated that fundamental rights are "intertemporal guarantees of freedom" and the burden of reducing greenhouse gas emissions cannot be "unilaterally offloaded onto the future."¹²⁷ The Court found that the legislature did not proportionally distribute the climate budget between present and future generations, asserting that "one generation must not be allowed to consume large portions of the [carbon dioxide emissions] budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom."¹²⁸ In the same vein, the Supreme Court of Pakistan has recognized the importance of considering the long-term impacts of climate change on future generations. In *Ahmed v. Capital Development Authority*, the Supreme Court held that the conversion of residential properties to commercial use in the city of Islamabad was unlawful because it failed to consider the challenges of climate change in urban planning.¹²⁹ The Supreme Court emphasized that "[c]limate-resilient development in cities of all sizes is crucial for improving the well-being of people and increasing the life opportunities of future generations."¹³⁰

(26) In addition to the large and growing number of States that have recognized the intergenerational dimensions of human rights in jurisprudence, other States have recognized future generations in legislation. In the United States, the National Environmental Policy Act imposes obligations on the Federal Government "to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony,

documents/2018/20181009_2015-HAZA-C0900456689_decision-4.pdf) (brought on behalf of current and future generations of Dutch nationals, and current and future generations outside of the Dutch government's jurisdiction) [hereinafter *Urgenda v. Neth.* 2015].

123. *Neth. v. Urgenda*, Hoge Raad, 20 Dec. 2019, ECLI:NL:HR:2019:2007, Case No. 19/00135, ¶¶ 3.1–6, 5.1–.10, 7.4.1–5.3 (Neth.).

124. *Id.* ¶¶ 5.7.3, 7.4.3.

125. Grundgesetz [GG] [Basic Law], arts. 1, 2(2), 20a (Ger.); *Neubauer v. Germ.*, *supra* note 22, ¶¶ 144–47, 196–98.

126. *Neubauer v. Germ.*, *supra* note 22, ¶ 193.

127. *Id.* ¶ 122.

128. *Id.* ¶ 192.

129. *Ahmed v. Capital Dev. Auth.*, Civ. Pet. No. 3347 to 3351, 4229, 4263 of 2021, ¶¶ 9–12 (S. Ct. Pak. Dec. 20, 2021).

130. *Id.* ¶ 9.

and fulfill the social, economic, and other requirements of present and future generations of Americans.”¹³¹ Similarly, Australia’s Environment Protection and Biodiversity Conservation Act recognizes the “principle of inter-generational equity” as a fundamental principle of ecologically sustainable development.¹³² The Act specifically provides that “the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.”¹³³ Trinidad and Tobago’s Environmental Management Act further contains the commitment to balancing “economic growth with environmentally sound practices, to enhance the quality of life and meet the needs of present and future generations.”¹³⁴ The Act establishes an obligation to develop laws, policies, and programs that “provide adequately for meeting the needs of present and future generations and enhancing the quality of life.”¹³⁵ Rwanda offers another compelling example of recognizing and protecting the human rights of future generations in the Organic Law Determining the Modalities of Protection, Conservation and Promotion of Environment.¹³⁶ This law is designed to ensure the durability of resources with a focus on equal rights for both present and future generations.¹³⁷ It acknowledges that the environment constitutes both a “common national heritage” and “an integral part of universal heritage,” with every individual bearing the duty and the State the responsibility to protect, conserve, and promote the environment.¹³⁸ The law further articulates that the principle of sustainability is central to ensuring “equal opportunities among generations” and that while human beings are entitled to the right to a “healthy and productive life in harmony with nature,” the right to development must be pursued with careful consideration of the needs of both present and future generations.¹³⁹

Rights in the law and cultural practice of Indigenous Peoples

(27) The recognition of future generations within the context of Indigenous Peoples’ rights is embedded in a variety of international standards.¹⁴⁰ For instance, Article 13 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) stipulates that Indigenous Peoples have the right to “revitalize, use, develop, and transmit” their cultural heritage, including languages, traditions, and knowledge systems, to future generations.¹⁴¹ Article 13 is further supported by Article 25, which recognizes the right of Indigenous Peoples to safeguard their ancestral territories, maintain and strengthen their relationship with their traditional lands and resources, waters and coastal territories, and uphold their responsibilities toward future

131. U.S. Nat’l Env’t Pol’y Act, 42 U.S.C., § 101, 42 USC § 4331(a) (2018).

132. Env’t Prot. & Biodiversity Conservation Act 1999 (Cth.), § 3A(c) (Austl.), as amended, compiled as of Aug. 1, 2014.

133. *Id.*

134. Env’t Mgmt. Act, 2000, pmb. ¶ 1 (Trin. & Tobago).

135. *Id.* § 4.

136. Org. L. No. 04/2005 of Apr. 8, 2005, Determining the Modalities of Prot., Conservation, & Promotion of Env’t in Rwanda, Off. Gaz. No. 09 of May 1, 2005 (Rwanda).

137. *Id.* art. 1(4).

138. *Id.* arts. 2, 3.

139. *Id.* art. 7(2).

140. *E.g.*, *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 12, U.N. Doc. A/68/322 (2013); *Gabčíkovo-Nagymaros Project* (separate opinion by Weeramantry, J.), 1997 I.C.J. 7, 99–110; Rio Declaration on Environment and Development, *supra* note 97, princ. 22; 2024 UN Declaration on Future Generations, *supra* note 8, commit. 16. See Commentary, Princ. 11.

141. U.N. Declaration on the Rights of Indigenous Peoples art. 13, *adopted* Sept. 13, 2007, G.A. Res. 61/295, U.N. GAOR, 62d Sess., U.N. Doc. A/RES/61/295 (2007) [hereinafter UNDRIP].

generations.¹⁴² These provisions are essential for ensuring the continuity of Indigenous Peoples' existence and for promoting the transmission of their cultures, knowledges, practices, lands, and resources to future generations of Indigenous Peoples and for future generations of humankind.¹⁴³

(28) At the regional level, Article 22 of the African Charter on Human and Peoples' Rights (African Charter) entrenches the right of all peoples to economic, social and cultural development "with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind."¹⁴⁴ The importance of Article 22 for Indigenous Peoples and future generations was articulated by the African Commission on Human and Peoples' Rights (African Commission) in *Centre for Minority Rights Development (on behalf of Endorois) v. Kenya*, where the Commission held that Indigenous Peoples' ancestral territories are crucial for preserving their cultural and religious practices for the benefit of present and future generations.¹⁴⁵

(29) Across African societies and communities, many Indigenous Peoples live by philosophies that embody an intergenerational view of justice, emphasizing the moral obligations of present generations to the "living dead" and future generations.¹⁴⁶ These philosophies emphasize that present actions have far-reaching consequences and that maintaining harmonious relationships with Nature and the broader "web of life" is essential for the well-being of future generations.¹⁴⁷ The Afrik-Akili Declaration exemplifies this worldview by emphasizing the responsibility toward future generations and highlights the intrinsic connection between the ecological gifts received from ancestors and the well-being of those yet-to-be-born.¹⁴⁸ The Afrik-Akili reaffirms a perspective that "embrace[s] the opportunities of a time yet to come while we retain a fluid sense of time & space in which the past, present and future co-exist. This wisdom we learn from a deep respect for spiritual eternity and the prolific cycles of nature."¹⁴⁹

(30) This perspective is also reflected in the philosophy of Ubuntu, prevalent in many sub-Saharan Nguni and Bantu languages and cultures, which signifies relational solidarity between Nature, all living beings, and past, present, and future generations.¹⁵⁰ Similarly, the Shona concept of Ukama, which roughly translates to "relationality," emphasizes duties owed to

142. *Id.* art. 25. See also *Report of the Special Rapporteur on the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study of the Problem of Discrimination Against Indigenous Populations*, José R. Martínez Cobo, ¶¶ 378–79, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4 (1986) (indicating that indigenous communities are "determined to preserve, develop, and transmit their ancestral territories and their ethnic identity," ensuring their continued existence and cultural practices for future generations).

143. *Report of the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People*, Rodolfo Stavenhagen, ¶ 40, U.N. Doc. A/59/258 (2004). See Commentary, Princ. 11.

144. African Charter on Human and Peoples' Rights art. 22, adopted June 27, 1981, 1520 U.N.T.S. 217 (entered into force Dec. 28, 1988) [hereinafter African Charter].

145. Communication No. 276/2003 (*Centre for Minority Rights Development (obo Endorois) v. Kenya*), Afr. Comm'n H.P.R., ¶ 157, 2008 Afr. Hum. Rts. L. Rep. 75 (2009).

146. Kevin G. Behrens, *Interspecific, Intergenerational Justice in African Thought*, in *IS PLANET EARTH GREEN?* 94, 97 (Gabriela Mádlo ed., 2013).

147. Kevin G. Behrens, *Moral Obligations Towards Future Generations in African Thought*, 8 *J. Global Ethics* 179, 182 (2012).

148. Afrik-Akili Declaration, 2022, <https://www.afrik-akili.org/declaration>, ¶ 9 (launched on International Day of the World's Indigenous Peoples on 9 August 2022 by the Club of Rome's Africa Chapter).

149. *Id.* ¶ 10.

150. SYLVIA TAMALE, *DECOLONIZATION AND AFRO-FEMINISM* 80–91, 187–234 (2020); Dorine E. Van Norren, *African Ubuntu and Sustainable Development Goals*, 43 *Third World Q.* 2791, 2793 (2022).

ancestors and future generations.¹⁵¹ Ukama asserts that the African community extends beyond the living and includes ancestors and future generations.¹⁵² Drawing from similar intertemporal views of community, the Indigenous pastoralist communities of Laikipia Maasai and Samburu in eastern Kenya plan for the long-term, with life plans extending up to a century.¹⁵³ They understand that their actions today impact future generations and their traditional ecological knowledge and resources are passed down to ensure the well-being of their descendants.¹⁵⁴

(31) In the American regions, several legal instruments and living practices emphasize the importance of preserving Indigenous Peoples' cultural identity, land, and resources for the well-being of present and future generations. The Inter-American Court of Human Rights highlighted the cultural and spiritual significance of ancestral lands, noting that denying the territorial rights of Indigenous Peoples protected in the American Convention on Human Rights can harm Indigenous Peoples' cultural identity and heritage, which should be passed on to future generations.¹⁵⁵ This judicial interpretation aligns with the American Declaration on the Rights of Indigenous Peoples, which explicitly recognizes Indigenous Peoples' right to their cultural identity, heritage, and knowledge systems and stresses the importance of preserving, maintaining, and transmitting cultural heritage to future generations.¹⁵⁶

(32) The Inuit Qaujimaqatugangit philosophy, animating practices of Indigenous Peoples in the Arctic and subarctic regions, emphasizes respect toward all living things, maintaining harmony, and planning for the future to sustain Inuit culture and well-being.¹⁵⁷ The Labrador Inuit Constitution of the Labrador Inuit Indigenous People acknowledges the responsibility of the Labrador Inuit to use and protect renewable and non-renewable resources for future generations and emphasizes environmental protection, conservation, and sustainable development as a collective responsibility.¹⁵⁸ Similarly, the Secwépemc laws of a First Nation community in Canada stress the importance of learning from and teaching about land and using resources responsibly to ensure that it is passed on to future generations.¹⁵⁹ This worldview is also reflected in the concept of "seventh-generation thinking," a fundamental principle in many Indigenous cultures in North America, including the Iroquois tradition, practiced by the Onondaga Nation

151. Munyaradzi F. Murove, *An African Commitment to Ecological Conservation: The Shona Concepts of Ukama and Ubuntu*, 45 *Mankind Q.* 196–215 (2004).

152. Workineh Kelbessa, *Intergenerational Justice and the Environment in Africa*, in *INTERCULTURAL PHILOSOPHY AND ENVIRONMENTAL JUSTICE BETWEEN GENERATIONS: INDIGENOUS, AFRICAN, ASIAN, AND WESTERN PERSPECTIVES* 57, 63–64 (Hiroshi Abe et al. eds., 2024).

153. KRZNNARIC, *GOOD ANCESTOR*, *supra* note 10, at 87.

154. Johnson M. Ole Kaunga, *The Use of Indigenous Traditional Knowledge for Ecological and Bio-Diverse Resource Management by the Laikipia Maasai and the Samburu*, in *KNOWING OUR LANDS AND RESOURCES: INDIGENOUS AND LOCAL KNOWLEDGE OF BIODIVERSITY AND ECOSYSTEM SERVICES IN AFRICA* 6–17 (Marie M. Roué et al. eds., 2015).

155. *E.g.*, *Mayagna (Sumo) Awajitjuna Community v. Nicar.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 149 (Aug. 31, 2001); *Yakye Axa Indigenous Community v. Para.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 124, 131, 203, 208 (June 17, 2005).

156. American Declaration on the Rights of Indigenous Peoples § 3, art. XIII, § 5, art. XXV, *adopted* June 15, 2016, O.A.S. Res. 2888 (LI-O/16) (2016) [hereinafter *American Declaration on the Rights of Indigenous Peoples*].

157. Shirley Tagalik, *Inuit Qaujimaqatugangit: The Role of Indigenous Knowledge in Supporting Wellness in Inuit Communities in Nunavut*, Nat'l Collaborating Ctr. for Aboriginal Health, 1–3 (2009–2010); Eleanor A. Bonny, *Inuit Qaujimaqatugangit and Knowledge Transmission in a Modern Inuit Community: Perceptions and Experiences of Mittimatalingmiut Women* 74–77 (2008) (M.A. thesis, University of Guelph).

158. Nunatsiavut Government, *Labrador Inuit Constitution*, N-3, §§ 1.1.3(e), 2.4.20 (2012) (Can.).

159. Jessica Asch et al., *Secwépemc Lands and Resources Law Research Project*, 10, 42 (Indigenous Law Research Unit, 2018).

and the Chippewas of Nawash.¹⁶⁰ This concept emphasizes the responsibility to make sustainable decisions and consider actions with the next seven generations in mind.¹⁶¹ Similarly, *Buen Vivir*, a Latin American concept rooted in Indigenous cosmology, emphasizes the inseparable connection between Nature and society and advocates for utmost respect for Nature to achieve intergenerational well-being and sustainability.¹⁶²

(33) Various Indigenous Peoples across the Asia-Pacific region, each with their distinct cultures and traditions, demonstrate a profound commitment to intergenerational solidarity, ensuring the preservation and sustainability of their cultural and natural heritage. For example, the Māori and other Indigenous Peoples in New Zealand practice *Kaitiakitanga*, which involves the active guardianship of natural resources.¹⁶³ This practice, which has evolved over generations, is a core element of cultural identity and ensures that these resources are protected for both present and future generations. The Indigenous Hawaiian belief system of *Huna* also recognizes future generations, emphasizing the importance of maintaining the balance between the spiritual and physical worlds.¹⁶⁴ In South Asia, the Garo community in Meghalaya, India, holds a tradition of preserving ancestral knowledge through a rich tapestry of rituals and ceremonies.¹⁶⁵ A notable example of this tradition is the careful transmission of forest plant collections from traditional healers to succeeding generations, safeguarding the plants and the knowledge and cultural significance they represent.¹⁶⁶ In Southeast Asia, there are several documented examples of Indigenous women playing crucial roles in maintaining cultural traditions and ensuring food security for future generations. Among the Akha People in Thailand, women manage crop production processes—a vital spiritual and cultural tradition meticulously passed down through generations.¹⁶⁷

Future generations within religious and faith traditions

(34) Diverse belief systems and faith traditions followed by the majority of the world's population, each in their unique way, acknowledge the responsibilities of present generations toward future generations,¹⁶⁸ and should be recognized in upholding the human rights of future generations.

160. KRZARNIC, *GOOD ANCESTOR*, *supra* note 10, at 71–91 (documenting various Indigenous sources and authors on “seventh-generation thinking”).

161. LINDA A. CLARKSON ET AL. EDS., *OUR RESPONSIBILITY TO THE SEVENTH GENERATION: INDIGENOUS PEOPLES AND SUSTAINABLE DEVELOPMENT*, 52–71 (1992).

162. Natasha Chassange, *Sustaining the ‘Good Life’: Buen Vivir as an Alternative to Sustainable Development*, 54 *Community Dev. J.* 482, 483 (2018).

163. Kura Paul-Burke & Lesly Rameka, *Kaitiakitanga – Active Guardianship, Responsibilities and Relationships with the World: Towards a Bio-Cultural Future*, in *ENCYCLOPEDIA OF EDUCATIONAL PHILOSOPHY AND THEORY* 1–6 (Michael A. Peters ed., 2018).

164. MOKE KUPIHEA, *THE CRY OF THE HUNA: THE ANCESTRAL VOICES OF HAWAII* 13–15, 136–40 (2005).

165. Francesca Chianese, *The Traditional Knowledge Advantage: Indigenous Peoples’ Knowledge in Climate Change Adaptation and Mitigation Strategies*, IFAD 24–25 (2016).

166. *Id.*

167. *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Indigenous Women and the Development, Application, Preservation and Transmission of Scientific and Technical Knowledge*, José F. Calí Tzay, U.N. GAOR, 51st Sess., Agenda Item 3, ¶ 94, U.N. Doc. A/HRC/51/28 (2022).

168. See, e.g., LOUK A. ANDRIANOS ET AL. EDS., *CONTEMPORARY ECOTHEOLOGY, CLIMATE JUSTICE AND ENVIRONMENTAL STEWARDSHIP IN WORLD RELIGIONS* (2021).

(35) Various expressions of the Christian faith endorse the concept of stewardship, emphasizing the collective responsibility to protect, cherish, and pass on the natural environment to future generations.¹⁶⁹ As an illustration, in the Papal Encyclical Letter *Laudato Si': On Care for Our Common Home*, Pope Francis drew on the lessons of Roman Catholic history, doctrine, and other Christian faith traditions to address the rising impacts of the climate crisis and environmental destruction.¹⁷⁰ He expressed solidarity with impoverished people and future generations and stated that present generations have “the duty to protect the earth and to ensure its fruitfulness for coming generations.”¹⁷¹

(36) Islamic faith expressions recognize Khilāfah, which views present generations as stewards of the Earth and all other created beings.¹⁷² Islamic doctrine recognizes that the Earth is “a joint usufruct in which each generation uses and makes the best use of nature, according to its need, without disrupting or adversely affecting the interests of future generations.”¹⁷³ The practice of Sufism, the mystical dimension of Islamic tradition, further regards the conservation and protection of the natural environment as a spiritual priority, emphasizing the need to preserve it and pass it on to future generations in its best possible form.¹⁷⁴

(37) Hinduism contains a wide range of beliefs and teachings advocating for responsibility toward future generations. Among these teachings is the law of karma, which holds that an individual’s actions in this lifetime will influence their destiny in future lives.¹⁷⁵ Hinduism encourages living a life of dharma—a harmonious balance of fulfilling one’s duties while maintaining harmony with oneself, others, and the broader world, including future generations.¹⁷⁶

(38) Buddhist teachings are rich in advancing intergenerational solidarity, particularly through the bodhisattva practice, which asserts a “commitment to being compassionately present as enlightening, intergenerational beings” and emphasizes that “regard for future generations is not some special or optional feature of justice.”¹⁷⁷

(39) Non-theistic traditions of Asia, such as Shintoism, display a profound respect for Nature and affirm the responsibilities of present generations to act as stewards of the planet for future

169. See, e.g., ROBERT VOSLOO ET AL. EDS., *BONHOEFFER AND THE RESPONSIBILITY FOR A COMING GENERATION: DOING THEOLOGY IN A TIME OUT OF JOINT* (1st ed., 2024); RACHEL MUERS, *LIVING FOR THE FUTURE: THEOLOGICAL ETHICS FOR COMING GENERATIONS* (2008); Joint Message for the Protection of Creation by Pope Francis, Ecumenical Patriarch Bartholomew & Archbishop of Canterbury, Sept. 11, 2021, <https://www.vatican.va/content/francesco/en/messages/cura-creato/documents/20210901-messaggio-protezionedelcreato.html>.

170. Pope Francis, Encyclical Letter *Laudato Si': On Care for Our Common Home*, 18, 71, 82, 118–20 (2015).

171. *Id.* at 49.

172. E.g., ABUBAKR A. BAGADER ET AL., *ENVIRONMENTAL PROTECTION IN ISLAM* (2d ed., 1994).

173. *Id.* at 2, 5.

174. See, e.g., JOHAN H. WITTEVEEN, *THE HEART OF SUFISM: ESSENTIAL WRITINGS OF HAZRAT INAYAT KHAN* (1999).

175. Justus O. Okafor & Osim Stella, *Hinduism and Ecology: Its Relevance and Importance*, 1 *J. Arts & Human.* 1, 1–10 (2018).

176. *Id.* at 11.

177. Peter D. Hershock, *What Do We Owe Future Generations: Compassion and Future Generations – A Buddhist Contribution to an Ethics of Global Interdependence*, in *PHILOSOPHY'S BIG QUESTIONS – COMPARING BUDDHIST AND WESTERN PERSPECTIVES* 250–74 (Steven M. Emmanuel ed., 2021).

generations.¹⁷⁸ Within Japanese religious practices, Shintoism emphasizes the importance of honoring ancestral traditions and passing on values and knowledge to future generations.¹⁷⁹ This is expressed in the concept of en-musubi, which exemplifies the Shinto belief in the interconnectedness and binding relationships between people, Nature, and the spiritual world. It highlights the importance of nurturing relationships, respecting Nature, and recognizing the impact of our actions on the broader world and future generations.¹⁸⁰

(40) Rabbinic teachers and scholars have drawn from the texts and traditions of Judaism to highlight the protection of future generations.¹⁸¹ The Religious Action Center on Reform Judaism underscored the need for environmentally responsible policies that “pay due attention to the public health and safety of both present and future generations” as a “solemn obligation to improve the world for future generations.”¹⁸²

(41) The Bahá'í Faith promotes the idea that the actions and decisions of the present generation should be guided by a sense of responsibility and stewardship toward the well-being of future generations.¹⁸³ Bahá'í teachings advocate for sustainable development, environmental conservation, and social justice to eliminate poverty and inequality in the present generation and create a better world for future generations.¹⁸⁴

3. *Limitations and Derogations*

States may only subject human rights, including the rights of present and future generations, to limitations and derogations expressly permitted under international law pertaining to those specific rights, and subject to the procedures and safeguards prescribed in the relevant international law.

Commentary

(1) Most human rights treaties permit States Parties to apply exceptions under certain circumstances that allow for a limitation in the realization of a right or exceptions to certain aspects of States Parties' obligations. Principle 3 affirms that there is no distinction between the rights of present and future generations concerning such limitations and derogations. It draws attention to the fact that any limitation and derogation that are provided for in a treaty are subject to stringent procedural and substantive safeguards. Principle 3 is formulated similarly to Principle

178. EDITH BROWN WEISS ED., ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW: NEW CHALLENGES AND DIMENSIONS, § II (1992).

179. MOTOHISA YAMAKAGE, THE ESSENCE OF SHINTO: JAPAN'S SPIRITUAL HEART 7, 35–36 (2006).

180. *Id.* at 36–37, 69–70.

181. *E.g.*, *A Rabbinic Letter on the Climate Crisis* (Oct. 29, 2015), <https://theshalomcenter.org/RabbinicLetterClimate;ElijahsCovenantBetweentheGenerationsToHealOurEndangeredEarth:A>NewRabbinicCalltoActionOntheClimateCrisis> (Jan. 2, 2020), <https://theshalomcenter.org/content/elijahs-covenant-new-rabbinic-statement-climate-crisis>.

182. *Jewish Values on Climate Change and Energy*, Religious Action Center on Reform Judaism, (n.d.) <https://rac.org/jewish-values-climate-change-energy>.

183. *Shared Vision, Shared Volition: Choosing Our Global Future Together*, Statement of the Bahá'í International Community to the U.N. Climate Change Conference in Paris, France (Nov. 23, 2015), <https://www.bic.org/statements/shared-vision-shared-volition-choosing-our-global-future-together#R6qsM7ezQYimqlBe.97>.

184. *Id.*

42 of the Maastricht Principles on Extraterritorial Obligations in regard to economic, social and cultural rights (Maastricht Principles on ETOs), a precursor to this Maastricht initiative.¹⁸⁵

(2) An example of a general limitation on rights is Article 4 of the ICESCR, which stipulates that States Parties may subject ESCRs “only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”¹⁸⁶ The Committee on Economic, Social and Cultural Rights has elaborated this rule regarding particular rights and set out substantive and procedural safeguards, for example, in areas such as forced evictions,¹⁸⁷ interferences with the right to water,¹⁸⁸ and retrogressive measures affecting the right to social security.¹⁸⁹ Some of the standards set out—applicable to all ESCRs—include requirements that limitations are suited to the legitimate purpose presented, that they are necessary in the sense that they are the least restrictive measure to fulfill the legitimate purpose, that the benefits of the limitation in promoting the general welfare outweigh the impact on the enjoyment of the right being limited, and that the public purpose is clearly set out in law to allow for judicial review.¹⁹⁰ Furthermore, the Committee on Economic, Social and Cultural Rights has stated that “[t]here is a strong presumption that retrogressive measures” taken in relation to the rights of the Covenant are prohibited and that the burden of proof rests on the State where there is a deliberate retrogression of rights to show that they have been introduced after the most careful consideration of all alternatives, addressed all rights in the ICESCR, and the State has fully used available resources.¹⁹¹ In terms of the right to social security, the Committee has set out the criteria for assessment as follows:

(a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.¹⁹²

These standards would make it very difficult for States to justify steps that would significantly limit the ESCRs of future generations, since such steps could amount to discrimination.¹⁹³ Any such limitation would require consultation with representatives of future generations¹⁹⁴ and, based on the criteria set out by the Committee, could only be invoked in an exceptional set of circumstances. The Committee on the Rights of the Child set out similar criteria for children’s

185. *Maastricht Principles on ETOs*, *supra* note 1, at 1168–69.

186. ICESCR, *supra* note 14. See *Limburg Principles*, *supra* note 1, ¶ 46–56.

187. *General Comment No. 7: The Right to Adequate Housing: Forced Evictions*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 16th Sess., ¶¶ 13–16, U.N. Doc. E/1998/22 (1997); *General Comment No. 26: Land and Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 73d Sess., ¶ 23, U.N. Doc. E/C.12/GC/26 (2023).

188. *General Comment No. 15*, *supra* note 64, ¶ 56.

189. *General Comment No. 19*, *supra* note 65, ¶ 42.

190. *E.g.*, *General Comment No. 26*, *supra* note 187, ¶ 23.

191. *General Comment No. 19*, *supra* note 65, ¶ 42. See Commentary, Princs. 17(q), 21(j).

192. *General Comment No. 19*, *supra* note 65, ¶ 42.

193. See Commentary, Princ. 6.

194. See Commentary, Princs. 22, 30(c).

ESCRs in the context of retrogressive measures.¹⁹⁵ In its General Comment on public budgeting, the Committee incorporated a “sustainability” component into budgeting and affirmed:

The best interests of *current and future generations of children* should be given serious consideration in all budget decisions. States parties should mobilize revenues and manage public resources in such a way as to ensure the ongoing adoption of policies and delivery of programmes aimed at directly or indirectly realizing children’s rights. States parties may only take retrogressive measures in relation to children’s rights as outlined in paragraph 31 above.¹⁹⁶

(3) Derogations are possible in particular circumstances. For example, Article 4 in the ICCPR sets out permissible derogations in the case of a “public emergency which threatens the life of the nation and the existence of which is officially proclaimed.”¹⁹⁷ In such cases, States Parties may temporarily derogate from their obligations when strictly required by the “exigencies of the situation,” provided that the measures do not involve discrimination solely on the grounds of race, color, sex, language, religion, or social origin.¹⁹⁸ Certain rights are non-derogable, such as the right to life, or the right to be protected from deportation or forcible transfer of populations without accepted justifications permitted under international law.¹⁹⁹ Procedural guarantees, including the presumption of innocence and other fundamental fair trial requirements, are non-derogable.²⁰⁰

4. Interpretation

- a) *Nothing in these Principles should be understood to affect any national or international standards that are more conducive to the realization of the rights of future generations.*
- b) *Nothing in these Principles may be interpreted to imply that any State, group, or person has a right to engage in any activity or to perform any act aimed at undermining any human rights recognized in these Principles, whether those of present or future generations.*
- c) *Nothing in these Principles recognizes any rights of human embryos or fetuses to be born, nor do they recognize an obligation on any individual to give birth to another. These Principles may not be construed as accepting any interferences with the bodily autonomy of women, girls, and others who can become pregnant, including their actions and decisions around pregnancy or abortion and other sexual and reproductive health and rights.*
- d) *These Principles must be interpreted and applied in a manner that is consistent with humanity’s dependence on Nature and all living beings, and with the need to uphold the realization of the rights of Nature and all living beings.*

Commentary

(1) The Principles are drafted based on international law and human rights and freedoms applicable to all States. Principle 4 (a) thus clarifies that the Principles describe a floor rather than a ceiling for the rights of future generations. Where specific provisions in national laws,

195. *General Comment No. 19, supra note 77, ¶ 31.*

196. *Id.* ¶ 63 (emphasis added).

197. ICCPR, *supra note 14.*

198. *General Comment No. 29: States of Emergency*, U.N. GAOR, Hum. Rts. Comm., 72d Sess., ¶ 1, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

199. ICCPR, *supra note 14*, art. 4(2); *General Comment No. 29, supra note 198*, ¶ 13(a), (d).

200. *General Comment No. 29, supra note 198*, ¶¶ 15–17.

regional human rights systems, or other areas of international law are more conducive to the realization of the rights of future generations, they should be complied with in those countries, regions, or legal contexts. Principle 4 (b) also clarifies that the Principles' silence on any particular form of human rights-abusing conduct does not imply that such conduct is permissible. The caveats in paragraphs (a) and (b) of Principle 4 are modeled on similar provisions in international human rights treaties, in particular Article 5 of both the ICESCR and ICCPR.

(2) Principle 4 (c) specifies that international law does not provide for the right of any future person to be born. While national, ethnic, religious, and racial groups—and other peoples and communities—hold a collective right to be free from intentional conduct aimed at destroying them, in whole or in part, by preventing births in that group, which would constitute genocide,²⁰¹ no such right extends to future individuals. As specified in Principle 1, the human rights of future generations pertain to those persons that will exist and come into being, not those that necessarily ought to exist.²⁰² Several scholars have convincingly argued from the standpoint of intergenerational justice that individuals are not obligated to bring forth offspring and consequently, potential persons do not have a right to be born.²⁰³ International and regional human rights law is clear that reproductive decisions rest with those who are able and choose to have children. Principle 4 (d) reaffirms the position in international and regional human rights law, which upholds the bodily autonomy of women, girls, and others capable of having children, including their rights to make decisions regarding family planning, pregnancy, abortion, and other sexual and reproductive health and rights.²⁰⁴

(3) The question may arise as to when a person's existence comes into being. International human rights law clearly clarifies that this point arrives at birth and not before.²⁰⁵ No human

201. Convention on the Prevention and Punishment of the Crime of Genocide arts. I, II, *adopted* Dec. 9, 1948, G.A. Res. 260 A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/RES/3/260, 78 U.N.T.S. 277 (*entered into force* Jan. 12, 1951) (sets out the duty of States to prevent such conduct).

202. See Commentary, Princ. 1, ¶¶ 1–2.

203. Sherry F. Colb, *To Whom Do We Refer When We Speak of Obligations to "Future Generations"? Reproductive Rights and the Intergenerational Community*, 14 Cornell L. Fac. Publ'ns, 1582–618 (2008); Ann Shalleck, *Offspring and Bodies: Dependency and Vulnerability in the Constitutional Jurisprudence of Reproductive Rights*, 77 Geo. Wash. L. Rev. 1620–30 (2009); Jan Narveson, *Semantics, Future Generations, and the Abortion Problem: Comments on a Fallacious Case Against the Morality of Abortion*, 2 Soc. Theory & Prac. 461–85 (1975).

204. CEDAW, *supra* note 33, art. 12; *General Recommendation No. 24: Women and Health*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 20th Sess., ¶ 31(c), (e), U.N. Doc. A/54/38 (1999); *General Comment No. 28: Equality of Rights between Men and Women*, Hum. Rts. Comm., 68th Sess., ¶¶ 10, 20, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000) (emphasizing States' responsibility to reduce maternal mortality due to clandestine abortions and recognized that restrictive abortion laws could violate women's and girls' right to life); *General Comment No. 22: The Right to Sexual and Reproductive Health*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 54th Sess., ¶¶ 5, 28, U.N. Doc. E/C.12/GC/22 (2016); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa art. 14, *adopted* Jul. 11, 2003, O.A.U. Doc. CAB/LEG/66.6 (*entered into force* Nov. 25, 2005) (2003) [hereinafter African Women's Protocol]; European Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, *adopted* Nov. 4, 1950, 213 U.N.T.S. 221 (*entered into force* Sept. 3, 1953) [hereinafter European Convention on Human Rights] (as interpreted to include personal autonomy, and decisions concerning sexual health and reproductive choices in *R.R. v. Pol.*, App. No. 27617/04, Eur. Ct. H.R., ¶¶ 179–81 (2011); American Convention on Human Rights, *supra* note 81, arts. 1(1), 5, 11, 17, 26 (as interpreted to include reproductive autonomy in *Manuela v. El Sal.*, Preliminary Objections, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 441 (Nov. 2, 2021).

205. Rhinda Copelon et. al., *Human Rights Begin at Birth: International law and the Claim of Fetal Rights*, 13 *Reprod. Health Matters* 120–29 (2005) (surveying international and regional human rights instruments and their interpretive practices, making the point that life begins at birth).

rights body has ever found voluntary abortion to be incompatible with human rights, including the right to life.²⁰⁶ Although international and regional human rights law recognizes the importance of extending safeguards to fetuses and embryos in certain circumstances, no human rights body has ever recognized embryos or fetuses as subjects of protection under the right to life or other rights, especially with respect to outweighing the rights of the pregnant person.²⁰⁷ For instance, the preambular reference to the protection of the child “before as well as after birth” in the CRC must be read with Article 24 (d) of the CRC providing for “appropriate pre-natal and post-natal health care for mothers.”²⁰⁸ The Committee on the Rights of the Child has emphasized the importance of universal access to a comprehensive set of sexual and reproductive health care interventions for women before, during, and after childbirth to “prevent the intergenerational transmission of ill-health.”²⁰⁹ However, the CRC does not recognize the right to life for a fetus. The CRC instead reflects States Parties’ obligation to promote the health and well-being of the pregnant person by providing nutrition, health services, and support directed at the pregnant person which will, in turn, benefit the child’s capacity to survive and thrive after birth.²¹⁰ It is incumbent upon accountability mechanisms to ensure that duty bearers, including States and healthcare providers, do not negatively affect the rights of any pregnant person and to reject any claims to deny such rights on any basis, including those based on the interests or rights of future generations.

(4) Principle 4 (d) addresses two distinct sets of rights. First, it recognizes that the realization of human rights depends on natural resources and living in harmony with Nature and other living beings for a clean, healthy and sustainable environment sustained by regenerative, living, and thriving biodiverse ecosystems. For example, the rights to life, health, the right to benefit from scientific progress, food, water, and other rights depend on biodiversity protection.²¹¹ This has culminated in the affirmation by States with the UN Human Rights Council Resolution 48/13 and the UN General Assembly Resolution 76/300 that there is a human right to a clean, healthy and sustainable environment.²¹² The rights of future generations are relevant to and

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206. See, e.g., Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 8; Communication No. 2324/2013 (Mellet v. Ir.), *adopted* Mar. 31, 2016, U.N. GAOR, Hum. Rts. Comm., 116th Sess., annex, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); Communication No. 2425/2014 (Whelan v. Ir.), *adopted* Mar. 17, 2017, U.N. GAOR, Hum. Rts. Comm., 119th Sess., annex, U.N. Doc. CCPR/C/119/D/2425/2014 (2017); *General Recommendation No. 35: Gender-Based Violence Against Women, Updating General Recommendation No. 19*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 67th Sess., ¶¶ 18, 29(c)(i), U.N. Doc. CEDAW/C/GC/35 (2017).
207. E.g., Vo v. Fr., App. No. 53924/00, Eur. Ct. H.R. (2004); Tysi c v. Pol., App. No. 5410/03, Eur. Ct. H.R. (2007); Communication No. 22/2009 (L.C. v. Peru), *adopted* Oct. 17, 2011, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 50th Sess., annex, U.N. Doc. CEDAW/C/50/D/22/2009 (2011); Murillo v. Costa Rica, Preliminary Objections, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257 (Nov. 28, 2012); Mellet v. Ir., Hum. Rts. Comm. (2016); Whelan v. Ir., Hum. Rts. Comm. (2017).
208. CRC, *supra* note 12, pmb. ¶ 9, art. 24(d) (emphasis added).
209. *General Comment No. 15: The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health*, U.N. GAOR, Comm. on Rts. Child, 62d Sess., ¶ 53, U.N. Doc. CRC/C/GC/15 (2013).
210. Copelon, *Human Rights Begin at Birth*, *supra* note 205, at 122–23; Philip Alston, *The Unborn Child and Abortion Under the Draft Convention on the Rights of the Child*, 12 Hum. Rts. Q. 156–78 (1990) (for an exposition of the drafting history and final text explicitly making this point).
211. *Report of the Special Rapporteur on the Human Right to a Healthy Environment, Good Practices*, David Boyd, U.N. H.R.C., 43d Sess., Agenda Item 3, ¶¶ 38–122, U.N. Doc. A/HRC/43/53 (2019) (emphasizing the interconnectedness of all human rights and a healthy environment).
212. H.R.C. Res. 48/13, *Human Right to a Clean, Healthy and Sustainable Environment* (2021); G.A. Res. 76/300, *Human Right to a Clean, Healthy and Sustainable Environment* (2022). See also *Statement on Human Rights and Climate Change*, Joint statement by the Comm. on Elim. Discrim. Against Women, Comm. on Econ., Soc.

simultaneously influenced by this right. This is most immediately evident in the explicit extension of the right to a clean, healthy and sustainable environment to future generations in a significant and growing number of national constitutions and legislative enactments.²¹³ More fundamentally, the right to a clean, healthy and sustainable environment and the rights of future generations are deeply interwoven when the natural environment—encompassing air, water, soil, plants, wildlife, and biodiverse ecosystems necessary to sustain life and support livelihoods—is itself the subject of harm. As the natural environment and shared global commons are degraded over time, the harms from such degradation fall disproportionately on future generations. Guiding principle 5 of the 2024 UN Declaration on Future Generations specifically asserts:

A clean, healthy and sustainable environment, where humanity lives in harmony with nature, must be created and maintained by urgently addressing the causes and adverse impacts of climate change and scaling up collective action to promote environmental protection.²¹⁴

(5) The second set of rights referred to in Principle 4 (d) is the rights of Nature and all living beings from a non-anthropocentric perspective. The rights of Nature and all living beings have increasingly gained legal recognition, with growing legal entrenchment within a diverse array of national legal systems.²¹⁵ In recent years, the rights of Nature and living beings have received more specific, concrete, and enforceable consideration within courts and quasi-judicial processes.²¹⁶ These advances have frequently been secured—and implemented by—Indigenous

& Cult. Rts., Comm. on Rts. of Migrant Workers & Families, Comm. on Rts. Child, & Comm. on Rts. of People with Disabilities, U.N. Doc. HRI/2019/1 (May 14, 2020); African Charter, *supra* note 144, art. 24; Arab Charter on Human Rights, *supra* note 80, art. 38; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) art. 11, *adopted* Nov. 17, 1988, O.A.S.T.S. No. 69, 28 I.L.M. (*entered into force* Nov. 16, 1999); Charter of Fundamental Rights of the EU art. 37, *adopted* Dec. 7, 2000, O.J. (C 326) 391 (*entered into force* 1 Dec. 2009) (2012) [hereinafter EU Fundamental Rights Charter]; Eur. Parl. Ass. Rec. 2211, *Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe*, Sept. 29, 2021, P.A.C.E. Doc. 15367 (ongoing developments to establish additional protocols to the European Convention on Human Rights and the European Social Charter concerning the right to a safe, clean, healthy and sustainable environment).

213. See Commentary, Princ. 2, ¶¶ 20–26.

214. 2024 UN Declaration on Future Generations, *supra* note 8, guid. princ. 5.

215. *E.g.*, Constitución de la República del Ecuador [Ecuador Const.] art. 403, as amended, Oct. 20, 2008; Constitución Política del Estado [Const. of the Plurinational State] arts. 33–34, Feb. 7, 2009, 108 (Bol.); Ley de Derechos de la Madre Tierra [Law of the Rights of Mother Earth], L. No. 071, Dec. 21, 2010 (Bol.); Ley que reconoce los derechos de la naturaleza y las obligaciones del Estado relacionadas con estos derechos [Law Recognizing the Rights of Nature and the Obligations of the State Related to These Rights], L. No. 287, Feb. 24, 2022 (Pan.); *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, Pub. Act 2017 No. 7 (N.Z.); *Te Urewera Act 2014*, Pub. Act 2014 No. 51 (N.Z.); Constitución Política de la Ciudad de México [Mex. City Const.] art. 5, as amended 2018; Nat'l Env't Act art. 4, 2019, Uganda Gaz. No. 10, Vol. CXII (Mar. 7, 2019) (Uganda); Iceland Draft Const. art. 33 (2011). See also Earth Charter, Earth Charter Initiative, June 29, 2000, <https://earthcharter.org/read-the-earth-charter/> [hereinafter Earth Charter]; Universal Declaration of the Rights of Mother Earth, World People's Conference on Climate Change and the Rights of Mother Earth, Apr. 22, 2010, Cochabamba (Bol.) [hereinafter Rights of Mother Earth].

216. See, *e.g.*, *Wheeler v. Dir. de la Procuraduría General del Estado de Loja*, Prov. Ct. Loja, Juicio No. 11121-2011-0010 (Mar. 30, 2011) (Ecuador) (recognizing the rights of the Rio Vilcabamba River); *Orangutana, Sandra s/ Habeas Corpus*, Fed. Chamber Crim. Cass., CCC 68831/2014/CA1 (Nov. 14, 2014) (Arg.) (recognizing Sandra the Orangutan as a “non-human person” with rights to freedom from mistreatment); *Animal Welfare Board of India v. Nagaraja* (2014) 7 SCC 547 (India) (protected bulls and bullocks from cruel practices) (India); *Centro de Estudios para la Justicia Social v. Pres.*, Const. Ct. Colom., Judgment T-622/16 (Nov. 10, 2016) (recognizing the rights of the Atrato River and its surrounding ecosystems); *Hum. Rts. & Peace for Bangladesh v. Sec'y Min. of Shipping*, Sup. Ct. Bangladesh, Writ Pet. No. 13989 of 2016 (2016) (recognizing the rights of the Turag River); *Salim v. Uttarakhand*, High Ct. Uttarakhand, Writ Pet. (PIL) No. 126 of 2014 (Mar. 20, 2017) (India) (recognizing the Ganga and Yamuna rivers as legal entities); *Sentencia No. 1149-19-JP/21*, Const. Ct.

Peoples, whose legal and cultural systems view humanity as an integral part of Nature, rather than *apart* from it.²¹⁷ As with the rights of future generations, this process reflects the ongoing expansion of our understanding of persons and entities, including species, ecosystems, and biogeophysical systems, as having rights capable of vindication. Similarly, as with the right to a clean, healthy and sustainable environment, recognizing and protecting the rights of Nature is an essential complement to ensuring the livability, viability, and integrity of the natural world that future generations will inherit and upon which their lives, livelihoods, and cultures will depend. To illustrate, Ecuador became the first country to enshrine the rights of Nature in its 2008 constitution. Article 71 provides that “nature or Pacha Mama” has the right to have its “existence, maintenance, and regeneration of vital cycles, structure, functions, and evolutionary processes” respected.²¹⁸ The first successful case vindicating the rights of Nature in Ecuador and globally, *Wheeler v. Director de la Procuraduría General Del Estado de Loja*, involved the rights of the Rio Vilcabamba River, where a constitutional injunction was granted against the Provincial Government for environmental damage caused by road construction.²¹⁹ The Provincial Court of Justice emphasized that the natural environment and its ecosystems have an inalienable right to exist and thrive, independent of their utility to humans.²²⁰ The Court also referred to the importance of recognizing the rights of Nature for future generations, stating the following:

The importance of Nature is so evident and indisputable that any argument against it becomes succinct and redundant. However, it is crucial not to forget that the damage caused to Nature is “generational damage”, meaning that it is of such magnitude that it affects not only the current generation but also future generations.²²¹

Of significance for future generations is that the case implicitly endorsed trusteeship duties that prohibit human beings from causing the extinction of species or disrupting the balance of natural ecosystems.²²² Instead, as shown under Principle 8, these duties must be carried out by present generations by not interfering with Nature’s own intertemporal rejuvenating characteristics, which, in turn, will secure a harmonious and sustainable relationship between Nature and human beings across generations.

(6) The present Principles do not seek to define the rights of Nature and all living beings, nor their extent and limitations, as this is beyond the mandate of the project. However, the Principles do recognize obligations toward the rights of Nature and all living beings, which are relevant in the context of realizing the human rights of future generations.²²³ Principle 4 (d) thus indicates that these Principles must be interpreted and applied in a manner that is consistent with the need to uphold the realization of the rights of Nature and all living beings, including those that will be developed in the future. These rights are part of a global wave of reform and reinterpretation of law, including human rights law, to confront its anthropocentric bias and address

Ecuador (Nov. 10, 2021) (established that Los Cedros Protected Forest is a subject of rights); Final Judgment No. 253-20-JH/22, Const. Ct. Ecuador (2022) (recognizing the rights of Estrellita the monkey).

217. See Commentary, Princs. 8, 11.

218. Ecuador Const, 2008.

219. *Wheeler*, Juicio No. 11121-2011-0010, ¶ 13(1).

220. *Id.* ¶ ¶ 5–8.

221. *Id.* ¶ 8.

222. *Id.* ¶ ¶ 11–12, 13(2)–(3). See Commentary, Princ. 8.

223. See Commentary, Princs. 7(c), 8(c), 10(b), 11, 22(d).

intergenerational injustices alongside ecological and interspecies injustices.²²⁴ The Special Rapporteur on the right to development, Surya Deva, in his report on the right to development of children and future generations, has made an important initial point that the rights of “future generations” must, by implication, account for the rising threats of their infringements.²²⁵ Surya Deva argues that the recognition of the human rights of future generations should extend “not only [to] human beings but also plants, animals and fungi . . . because of the interdependence of humans with other organisms and nature generally.”²²⁶ The Special Rapporteur indicated that this recognition aligns with his proposed approach of “planet-centred participatory development.”²²⁷ A planet-centered participatory development approach is a model of development that focuses on placing the planet at the center of development decision-making processes, ensuring the protection of the entire planetary ecosystems, including humanity, biodiversity, and the environment.²²⁸ This model also aims to address the negative impacts of the current presentist-anthropocentric approach to development and involves establishing trustees for the planet, its inhabitants, and future generations in decision-making processes.²²⁹

5. *Universality and Indivisibility of Human Rights*

- a) *All human beings – in the past, present, and future – are equal in dignity and entitled to the full and equal enjoyment of human rights.*
- b) *All human rights are universal, indivisible, interdependent, and interrelated. Future generations are entitled to all individual and collective human rights, including but not limited to, civil and political rights, economic, social and cultural rights, the right to a clean, healthy and sustainable environment; the right to development; the right to self-determination; and the right to peace.*

Commentary

(1) The claims to the universality of human rights rest on the dignity and worth ascribed to human beings. Thus, Article 1 of the UDHR proclaims that “[a]ll human beings are born free and equal

224. See, e.g., Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship, Earth Trusteeship Initiative, 2018 [hereinafter Hague Principles on Trusteeship]; VANDANA SHIVA, *EARTH DEMOCRACY: JUSTICE, SUSTAINABILITY, AND PEACE* (2015); Joyeeta Gupta et al., *Earth System Boundaries and Earth System Justice: Sharing the Ecospace*, *Env't Pol.* 1–20 (2023); Louis J. Kotzé et al., *Earth System Law: Exploring New Frontiers in Legal Science*, 11 *Earth Syst. Governance*. 1–9 (2022); SOPHIE CHAO ET AL. EDS., *THE PROMISE OF MULTISPECIES JUSTICE* (2022); Linda Sheehan & Grant Wilson, *Fighting for Our Shared Future: Protecting Both Human Rights and Nature's Rights*, *Earth Law Center* (Dec. 2015); RANDALL S. ABATE, *CLIMATE CHANGE AND THE VOICELESS: PROTECTING FUTURE GENERATIONS, WILDLIFE, AND NATURAL RESOURCES* (2019); César Rodríguez-Garavito & Carlos A. Baquero-Díaz, *Reframing Indigenous Rights: The Right to Consultation and the Rights of Nature and Future Generations in the Sarayaku Legal Mobilization*, in *LEGAL MOBILIZATION FOR HUMAN RIGHTS* 74–88 (Gráinne de Búrca ed., 2022); DAVID R. BOYD, *THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD* (2017).

225. Special Rapporteur on the Right to Development, *Children and Future Generations*, ¶ 77, U.N. Doc. A/HRC/57/43 (2024).

226. *Id.*

227. *Id.*

228. *Report of the Special Rapporteur on the Right to Development, Reinvigorating the Right to Development: A Vision for the Future*, Surya Deva, U.N. H.R.C., 54th Sess., Agenda Item 3, ¶¶ 63–65, U.N. Doc. A/HRC/54/27 (2023).

229. *Id.* ¶ 64. See Commentary, *Princ.* 8, 22.

in dignity and rights.²³⁰ Ascribing human rights only to presently living generations undermines the principle of the universality of human rights, which should apply across space and time. As noted under the Commentary to Principle 2 and worth reiterating, the UN Secretary-General's report on intergenerational solidarity and the needs of future generations asserts that the basis for our obligations toward future generations is "the equal concern and respect that we owe to all humans, regardless of where and when they may have been born."²³¹ The 1997 UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations (UNESCO Declaration on Future Generations) also proclaims:

The present generations should strive to ensure the maintenance and perpetuation of humankind with due respect for the dignity of the human person. Consequently, the nature and form of human life must not be undermined in any way whatsoever.²³²

(2) Similar arguments have been made by a range of scholars. Kerri Woods argues that any defense of the universality of human rights must accept that human rights are extended "to all those who meet the moral criteria of being 'human.'"²³³ Marcus Düwell and Gerhard Bos argue that obligations to future generations exist as a result of the humanity of these future people and the impact that our actions will have on their human rights.²³⁴ Bridget Lewis argues that the basis for extraterritorial human rights obligations is analogous to obligations toward future generations. The obligations of States have been interpreted to extend beyond those within the physical territory to include "any person who is under the control of a State or affected by the operation of its laws."²³⁵ Lewis therefore suggests that "where a State has the ability to affect the rights of a person (be they currently alive or not yet born) then it is argued that the State must exercise that power in a way which is consistent with human rights."²³⁶ The argument is that if States' obligations extend to extraterritorial impacts on human rights, then, by the same logic, they should also extend to *extratemporal* impacts.

(3) The universality of human rights also rests on the principle of the *equal* moral worth and importance of all human beings "without distinction of any kind."²³⁷ Principle 6 stipulates and the Commentary thereto further develops the prohibition of intergenerational discrimination, particularly on the recognized ground of birth. This Principle prohibits discriminatory conduct or omissions by present generations that will affect the circumstances into which future persons, groups, and peoples are born, resulting in diminished access to and enjoyment of human rights, thereby undermining their equal moral worth. The equality dimension of the rights of future generations is thus closely linked to the principle of intergenerational equity, a key element of

230. UDHR, *supra* note 29. See Paolo G. Carozza, *Human Dignity*, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW 345–59 (Dinah Shelton ed., 2013) (on human dignity "as a basic principle of international human rights law").

231. *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 13, U.N. Doc. A/68/322 (2013).

232. UNESCO Declaration on Future Generations, *supra* note 88, art. 3.

233. Kerri Woods, *The Rights of (Future) Humans Qua Humans*, 15 J. Hum. Rts. 291, 293 (2016). See also Stephen Riley, *Architectures of Intergenerational Justice: Human Dignity, International Law, and Duties to Future Generations*, 15 J. Hum. Rts. 272, 274 (2016).

234. Marcus Düwell & Gerhard Bos, *Human Rights and Future People – Possibilities of Argumentation*, 15 J. Hum. Rts. 231, 283 (2016).

235. Bridget Lewis, *Human Rights Duties Towards Future Generations and the Potential for Achieving Climate Justice*, 34 Neth. Q. Hum. Rts. 206, 217 (2016). See Commentary, Princ. 24.

236. Lewis, *Human Rights Duties Towards Future Generations*, *supra* note 235, at 217.

237. UDHR, *supra* note 29, art. 2. See Commentary, Princ. 6, ¶¶ 1–4.

sustainable development.²³⁸ The UNFCCC refers to future generations in its preamble and further includes intergenerational equity as one of the guiding principles.²³⁹ In her seminal work on future generations, Edith Brown Weiss describes intergenerational equity as a generational partnership with three central principles: (1) comparable options, which requires the conservation of diversity in natural resources; (2) comparable quality, which entails ensuring that for each generation the environment is, at least, of a comparable quality to that enjoyed by the previous generation; and (3) comparable access, requiring equitable and non-discriminatory access to the use and benefit of natural resources.²⁴⁰ These three components of intergenerational equity are reiterated in the UN Secretary-General's report on intergenerational solidarity and the needs of future generations.²⁴¹

(4) Principle 5 (b) restates the universality, indivisibility, interdependence, and interrelatedness of human rights, which have been repeatedly affirmed.²⁴² The 2024 Pact for the Future highlights the critical importance of the universality and indivisibility of human rights, emphasizing:

We will respect, protect, promote and fulfil all human rights, recognizing their universality, indivisibility, interdependence and interrelatedness, and we will be unequivocal in what we stand for and uphold: freedom from fear and freedom from want for all.²⁴³

This has both normative and practical significance. Normatively, it represents a commitment to treating all human rights norms “globally in a fair and equal manner, on the same footing, and with the same emphasis.”²⁴⁴ Practically, it constitutes a recognition that the effectiveness of human rights norms depends on treating them as an integrated whole, rather than in a fragmented and hierarchical manner.²⁴⁵ As Bruce Porter argues:

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238. PHILIPPE J. SANDS ET AL. EDS., *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 219 (4th ed., 2018); PIERRE-MARIE DUPUY & JORGE E. VIÑUALES, *INTERNATIONAL ENVIRONMENTAL LAW* 93 (2018); Virginie Barral, *The Principle of Sustainable Development*, in *PRINCIPLES OF ENVIRONMENTAL LAW* 103, 108 (Ludwig Krämer & Emanuela Orlando eds., 2018); Rodwell Fambasayi & Michael Addaney, *Cascading Impacts of Climate Change and the Rights of Children in Africa: A Reflection on the Principle of Intergenerational Equity*, 21 *Afr. Hum. Rts. L. J.* 29–51 (2021). See Commentary, Princ. 7.
239. UNFCCC, *supra* note 98, pmb. ¶ 14, art. 3(1) (“The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.”).
240. Edith Brown Weiss, *Climate Change, Intergenerational Equity, and International Law*, 9 *Vt. J. Env’t L.* 615, 616 (2008). See also Bridget Lewis, *The Rights of Future Generations within the Post-Paris Climate Regime*, 7 *Transnat’l Env’t L.* 69, 84 (2018); Megan E. Donald, *Greening the Covenant: Integrating Environmental Considerations in the Interpretation of State Parties Obligations under Article 2(1) of the International Covenant on Economic, Social and Cultural Rights* (2021) (L.L.D. dissertation, Stellenbosch University) (<https://scholar.sun.ac.za/items/4e04e12c-3a5b-49d2-bf8d-3014ead40b18>) at 101–04, 234, 245–48.
241. *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 24, U.N. Doc. A/68/322 (2013). See also *Habitantes de La Oroya v. Peru*, *Inter-Am. Ct. H.R. (ser. C) No. 511*, ¶ 129 (2023).
242. See, e.g., *Proclamation of Tehran*, Final Act of the International Conference on Human Rights, Pt. XXI, U.N. Doc. A/CONF.32/41 (1968); *Vienna Declaration and Programme of Action*, adopted June 25, 1993, U.N. GAOR, World Conf. on Hum. Rts., 48th Sess., 22d plen. mtg., pt. I, ¶ 5, U.N. Doc. A/CONF.157/23 (1993), reprinted in 32 *I.L.M.* 1661 (1993) [hereinafter *Vienna Declaration*]; CRPD, *supra* note 33, pmb. ¶ (c). See generally Bruce Porter, *Interdependence of Human Rights*, in *RESEARCH HANDBOOK ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS AS HUMAN RIGHTS* 301–06 (Jackie Dugard et al. eds., 2020) (for an analysis of the principle of interdependence in international human rights law).
243. 2024 Pact for the Future, *supra* note 16, ¶ 13.
244. *Vienna Declaration*, *supra* note 242, pt. 1, ¶ 5.
245. For example, by treating civil and political rights as superior to economic, social and cultural rights, see Martin Scheinin, *Characteristics of Human Rights Norms*, in *INTERNATIONAL PROTECTION OF HUMAN RIGHTS: A TEXTBOOK* 19, 22–26 (Christina Krause & Martin Scheinin eds., 2012).

[t]he principle of interdependence is central to this project [of restoration] not simply as a statement about how the two categories of rights are to be regarded as conceptually related, but also as a dynamic principle of interpretation and application of human rights through which the norms and contents of different rights inform, reinforce, nurture and grow together in response to human rights claims emerging from human experience.²⁴⁶

The same normative and practical considerations apply, for example, regarding humanity's relationship with the natural world and ecosystems. The survival of human beings and their fundamental interests and well-being are interrelated with and inseparable from the natural world and its systems.²⁴⁷ As the Human Rights Committee noted in relation to the right to life:

Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.²⁴⁸

(5) The principle of interdependence requires that a generous and holistic interpretation be given to the human rights to which present and future generations are entitled. This refers to an approach that interprets legal provisions or rights in the broadest and most expansive manner possible, with the aim of enhancing the effective protection and realization of human rights for present and future generations.²⁴⁹ As stated in Principle 5 (b), future generations are entitled to all individual and collective human rights, including, but not limited to, civil and political rights (CPRs), ESCRs, and the right to a clean, healthy and sustainable environment,²⁵⁰ development,²⁵¹ self-determination,²⁵² and peace.²⁵³

246. Porter, *Interdependence of Human Rights*, *supra* note 242, at 301.

247. See Commentary, Princ. 4(d), ¶¶ 5–6.

248. *General Comment No. 36*, *supra* note 62, ¶ 62.

249. See Commentary, Princ. 2, ¶¶ 4–9.

250. See Commentary, Princ. 4, sources cited ¶ 4.

251. *E.g.*, Declaration on the Right to Development, *adopted* Dec. 4, 1986, G.A. Res. 41/128, U.N. GAOR, 97th plen. mtg., U.N. Doc. A/RES/41/128 (Dec. 4, 1986) [hereinafter Declaration on the Right to Development]; Vienna Declaration, *supra* note 242, pt. 1, ¶¶ 10–11; African Charter, *supra* note 144, art. 22; *Endorois v. Kenya*, Afr. Comm'n H.P.R., ¶¶ 269–98 (2009); *Afr. Comm'n H.P.R. v. Kenya*, Judgment, App. No. 006/2012, Afr. Ct. H.P.R., ¶¶ 202–11 (May 26, 2017); American Convention on Human Rights, *supra* note 81, art. 26 (right to “progressive development” in terms of ESCRs) (see LUDOVIC HENNEBEL & HÉLÈNE TIGROUDJA, *THE AMERICAN CONVENTION ON HUMAN RIGHTS: A COMMENTARY* 758–89 (2022)); Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., ¶ 52–60 (for the right to development's interdependence with the right to a healthy and sustainable environment). See also *Draft Convention on the Right to Development*, Working Grp. Rt. to Development, U.N. H.R.C., 23d Sess., Agenda Item 4, U.N. Doc. A/HRC/WG.2/23/2 (Apr. 6, 2022) [hereinafter *Draft Convention on the Right to Development*], imposing obligations on States Parties in relation to sustainable development, including ensuring that their “decisions and actions do not compromise the ability of present and future generations to realize their right to development,” *id.* art. 23(b), and sustainable development is one of the general principles, *id.* art. 3(g), stating:

development must be achieved in its three dimensions, namely, economic, social and environmental, in a balanced and integrated manner and in harmony with nature. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations; and the right to development cannot be realized if development is unsustainable.

On the *Draft Convention on the Right to Development*, see Roman G. Teshome, *The Draft Convention on the Right to Development: A New Dawn to the Recognition of the Right to Development as a Human Right?*, 22 *Hum. Rts. L. Rev.* 1–24 (2022).

252. ICESCR, *supra* note 14, art. 1; ICCPR, *supra* note 14, art. 1; UNDRIP, *supra* note 141, art. 3; African Charter, *supra* note 144, art. 21; American Convention on Human Rights, *supra* note 81, art. 7 (see HENNEBEL & TIGROUDJA, *AMERICAN CONVENTION COMMENTARY*, *supra* note 251, at 282–85, indicating that self-determination is recognized as a component of the rights to liberty and security).

253. African Charter, *supra* note 144, art. 23; Declaration on the Right to Peace, *adopted* Dec. 19, G.A. Res. 71/189, 2016, U.N. GAOR, 71st Sess., Agenda Item 68(b), U.N. Doc. A/RES/71/189 (2017). On the Declaration on the Right to Peace, see Tuba Turan, *The 2016 UN General Assembly Declaration on the Right to Peace: A Step*

6. *Equality and Non-Discrimination*

- a) *Future generations have the right to equal enjoyment of all human rights. States must guarantee the rights of future generations as set out in these principles without discrimination of any kind. States and other duty bearers must refrain from any conduct which can reasonably be expected to result in or perpetuate any form of discrimination against future generations.*
- b) *States must eliminate all forms of direct and indirect discrimination, including intersectional discrimination, on grounds of race, color, ethnic origin, sex, gender, sexual orientation, gender identity, marital and family status, work, descent, disability, health status, place of residence, age, national or social origin, religion, culture or language, political or other opinion, property, birth, economic and social situation, or any other status recognized, or to be recognized under international human rights law.*
- c) *States must protect present and future generations against all forms of discrimination by public and private actors and prevent the emergence of new forms of discrimination.*
- d) *States must take special measures to eliminate and prevent all forms of discrimination against groups and peoples that have experienced historical and/or systemic forms of discrimination such as slavery, colonialism, racism, discriminatory gender norms and practices and patriarchy. Such measures must include eliminating and preventing the intergenerational transmission of inequality, poverty and oppression. States must also redress the continuing impacts of past injustices in order to ensure that present and future generations are not subject to similar abuses. Special measures must be continued until the full and equal enjoyment of human rights by all is achieved in law and in practice.*
- e) *Future generations must be free from intergenerational discrimination. This discrimination includes but is not limited to:*
 - i. *The waste, destruction, or unsustainable use of resources essential to human life;*
 - ii. *Shifting the burden of responding to present crises to future generations; and*
 - iii. *According less value to future lives and rights than the lives and rights of present generations, including discounting the impacts and burdens of present conduct on the lives and rights of future generations.*

Commentary

(1) Principle 6 establishes that future generations have the right to the equal enjoyment of all human rights and freedoms without discrimination. Principle 6 builds on Principle 5, which holds that all human beings—past, present, and future—are equal in dignity and entitled to the full and equal enjoyment of human rights, where all rights and freedoms must be enjoyed on a non-discriminatory basis. Principle 6 restates the position in international and regional human rights law that equality and non-discrimination permeate all rights and freedoms.²⁵⁴ The principles and rights of equality and non-discrimination assert that all persons are equal before

Towards Sustainable Positive Peace Within Societies?, 23 Hum. Rts. L. Rev. 1–24 (2023). See generally CHRISTIAN GUILLERMET-FERNÁNDEZ ET AL., *THE RIGHT TO PEACE: PAST, PRESENT AND FUTURE* (2017).

254. E.g., U.N. Charter, *supra* note 28, arts. 1(3), 13(1)(b), 55(c), 76; UDHR, *supra* note 29, arts. 2, 7; ICCPR, *supra* note 14, arts. 2(1), 26; ICESCR, *supra* note 14, art. 2(2); CRC, *supra* note 12, art. 2; CEDAW, *supra* note 33, pmb., arts. 1, 2; CERD, *supra* note 33, pmb., arts. 1, 2; CRPD, *supra* note 33, pmb., arts. 1, 2, 3(b); African Charter, *supra* note 144, arts. 2, 3, 18(3), 19; American Convention on Human Rights, *supra* note 81, arts. 1(1), 24; European Convention on Human Rights, *supra* note 204, arts. 1, 14; Arab Charter on Human Rights, *supra* note 80, arts. 3, 11.

the law, must enjoy the equal benefit of the law, and must enjoy all their rights without discrimination.²⁵⁵

(2) Principle 6 reiterates the elimination of discrimination on a non-exhaustive list of grounds recognized or to be recognized under international human rights law, including race, color, ethnic origin, sex, gender, sexual orientation, gender identity and expression, marital and family status, work or employment status, descent, physical or mental disability, health status (including HIV/AIDS status), place of residence, age, national or social origin, religion, culture or language, political or other opinion, property, birth, economic and social situation, or any “other status.” Principle 6 endorses established non-discrimination provisions in international human rights law where future generations are already, or could be, regarded as a protected group.

(3) Future generations are among the protected groups of the already recognized grounds of “birth” and “social origin.” The UDHR’s non-discrimination provision is the normative inspiration for and has mirroring textual provisions in²⁵⁶ most international and regional human rights non-discrimination provisions, which prohibit discrimination on the grounds of “social origin” and “birth.” The drafting history of the UDHR’s non-discrimination provision indicates that “birth” was inserted to address “inherited privileges” and the unequal conditions into which people are born, while “social origin” was included to address the discriminatory conditions from which people originate.²⁵⁷ These grounds should be interpreted by a purposive and evolutive interpretation²⁵⁸ to include a temporal dimension, recognizing that the conduct of present generations will affect the circumstances into which future persons, groups, and peoples are born or originate. The drafting history of the UDHR showcases that future generations were intended as beneficiaries of the UDHR,²⁵⁹ supporting an interpretation that “birth” and “social origin” should be understood with a temporal dimension.²⁶⁰ The temporal dimension of the ground of “birth” is illustrated in the 2023 *Mathur v. Ontario* case before the Ontario Superior Court of Justice in Canada.²⁶¹ In *Mathur*, the applicants argued that Ontario’s rollback of greenhouse gas reduction targets was unconstitutional, violating their rights of life, liberty, security of the person, and equality and non-discrimination under the Canadian Charter of Rights and Freedoms.²⁶² They claimed that these inadequate targets disproportionately impacted young people and future generations, effectively discriminating against them based on “age,” a listed ground of discrimination under the Canadian Charter, or on “generational cohort or birth,” an

255. Daniel Moeckli, *Equality and Non-Discrimination*, in INTERNATIONAL HUMAN RIGHTS LAW 151, 156–58 (Daniel Moeckli et al. eds., 4th ed., 2022); MPOKI MWAKGALI, INTERNATIONAL HUMAN RIGHTS LAW AND DISCRIMINATION PROTECTIONS: A COMPARISON OF REGIONAL AND NATIONAL RESPONSES 1–15 (2018).

256. Sigrun Skogly, *Article 2*, in THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMON STANDARD OF ACHIEVEMENT 75, 76–81 (Gudmundur Alfredsson & Asbjørn Eide eds., 1999).

257. SCHABAS, UDHR TRAVAUX, *supra* note 44, at xxxiii–xcii, 166–67; JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING & INTENT 113 (1999).

258. See Commentary, Princ. 2, ¶¶ 4–9.

259. See Commentary, Princ. 2, ¶ 5. See also SCHABAS, UDHR TRAVAUX, *supra* note 44, at 1643, 1842, 2722.

260. *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 42d Sess., ¶ 27, U.N. Doc. E/C.12/GC/20 (2009) (asserting that the “nature of discrimination varies according to context and evolves over time”).

261. *Mathur v. Ontario*, Apr. 14, 2023 O.N.S.C 2316 (2023), *appeal docketed*, No. CV-19-00631627-0000 (Ont. C.A., May 15, 2023) (Can.).

262. Canadian Charter of Rights and Freedoms §§ 7, 15, Pt. I of the Constitution Act, 1982, being Sched. B to the Canada Act, 1982, c. 11 (U.K.).

unlisted ground that they argued was an analogous ground of discrimination.²⁶³ The applicants alleged that the “catastrophic impacts of climate change will worsen over time as global temperatures continue to rise,” and due to their “age, youth and future generations will bear the brunt of these impacts as they live longer into the future.”²⁶⁴ The Court held that the adverse impact based on “age” could not be sufficiently shown, and that the distinction was rather based on a “temporal distinction.”²⁶⁵ The Court held:

The temporal nature of the distinction is shown by the fact that the impacts of climate change will be experienced by all age groups in the future. For instance, in 2050, the impacts of climate change will be experienced by all Ontarians who will be alive at that time, including people who are today in their 30s, 40s or 50s, as well as youth and young people and people yet-to-be-born.²⁶⁶

The Court then held that whether the ground of “generational cohort” based on birth could be regarded as an analogous ground of discrimination under the Canadian Charter to protect future generations need not be determined because the evidence before the Court was insufficient to make such a determination. This holding, however, did not close the door to finding discrimination based on “generational cohort” based on birth. “Birth” is indeed a prohibited ground of discrimination under international and regional human rights law, and the *Mathur* judgment is an important illustration of the temporal distinction that can be recognized in cases of discrimination against future generations. This interpretation aligns with Christoph Herrler’s argument that recognizing future generations as a protected group denounces discrimination “on the basis of the point in time of someone’s birth,” requiring duty bearers to “explicitly state and explain the legitimacy of the reasons for decisions that disadvantage future generations.”²⁶⁷

(4) The second mechanism supporting the recognition of future generations as a protected group is that future generations meet several criteria for inclusion under the category of “other status.” In international human rights law, the most prominent criterion is that any condition, characteristic, or attribute that adversely affects or has disadvantageous implications for the equal enjoyment of a person’s rights and freedoms should be regarded as “comparable” or “analogous” to listed grounds.²⁶⁸ A key criterion favoring the recognition of future generations in non-discrimination provisions is their “distinct representational disadvantage.”²⁶⁹ Since future generations do not yet exist, they are essentially voiceless in decisions made by present generations that fundamentally shape the world future generations will inherit and must inhabit.²⁷⁰ Moreover, the consequences of today’s actions and omissions increasingly place a severe and disadvantageous burden on future generations. As a result, future generations are at an escalating risk of diminished access to and enjoyment of human rights due to the acts and

263. *Mathur v. Ontario*, 2022 O.N.S.C. 2316, ¶¶ 67–74 (2022) (Can.).

264. *Id.* ¶ 177(b).

265. *Id.* ¶¶ 177–82.

266. *Id.* ¶ 180.

267. Christoph Herrler, *Human Rights and Climate Risks for Future Generations: How Moral Obligations and the Non-Discrimination Principle Can Be Applied*, 47 *Intergenerational Just. Rev.* 41, 47 (2022). See also KASPER LIPPERT-RASMUSSEN, *BORN FREE AND EQUAL? A PHILOSOPHICAL INQUIRY INTO THE NATURE OF DISCRIMINATION* 19 (2014) (referring to “possible people”).

268. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20*, *supra* note 260, ¶¶ 15, 27; Moeckli, *Equality and Non-Discrimination*, *supra* note 255, at 156–58; SANDRA FREDMAN, *DISCRIMINATION LAW* 168–232 (4th ed., 2022); Declaration of Principles on Equality, *The Equality Rights Trust*, princ. 5 (2008).

269. As recognized in *Verein Klimasenioren Schweiz v. Switz.*, App. No. 53600/20, Eur. Ct. H.R., ¶¶ 420, 485 (Apr. 9, 2024).

270. See Commentary, *Princ.* 22.

omissions of present generations, which undermines their equal worth as human beings entitled to the full and equal enjoyment of human rights.

(5) Principle 6 (b) highlights the intersectional forms of discrimination temporally linked to future generations.²⁷¹ Intersectional discrimination occurs when discrimination is based on two or more grounds simultaneously, producing “similar and different patterns of group disadvantage when multiple grounds intersect.”²⁷² The Special Rapporteur on the right to development, Surya Deva, in the report on the right to development of children and future generations, highlighted:

The representation of future generations in decision-making mechanisms should be informed by an intersectional approach to capture differential and disproportionate impacts on them, because like present generations, future generations will not be homogeneous. Therefore, the present representatives of future generations should reflect diversity in terms of factors such as age, race, ethnicity, caste, gender, sexual orientation, ability, religion, socioeconomic condition, Indigeneity and migrant status.²⁷³

Understanding the intersectional character of discrimination sheds light on the time-sensitive nature of discrimination provisions, which prohibit several grounds of discrimination because groups have faced systemic discrimination and exclusion.²⁷⁴ Discrimination provisions thus require the redress of historical and presently existing human rights violations to prevent the reproduction of cycles of systemic disadvantage that transmit and compound across generations.

(6) Present generations cannot precisely determine future generations’ needs, preferences, and challenges, nor should we prescribe to future generations what “the good life” would constitute,²⁷⁵ as this would undermine their right to self-determination. However, each generation must ensure that its activities do not lead to irreversible discriminatory harms, impacts, or reasonably foreseeable consequences that would deny future generations equality in access to the necessary natural and cultural options in the intergenerational continuum of life.²⁷⁶ The Principles integrate the commitment in international human rights law that non-discrimination and equality must be guaranteed not only formally and legally but also substantively and in reality.²⁷⁷ In General Comment 6 on equality and non-discrimination, the Committee on the Rights of Persons with Disabilities has systematized the approach to equality and non-discrimination in international human rights law, providing a “substantive model of equality” that includes the following dimensions:

271. Fausto Corvino, *The Intersectional Approach to Intergenerational Justice: A First Sketch*, Acad. Lett. 1–7 (2021).

272. Shreya Atrey, *Fifty Years On: The Curious Case of Intersectional Discrimination in the ICCPR*, 35 Nordic J. Hum. Rts. 220, 225 (2017). See also Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20, supra* note 260, ¶¶ 20, 27.

273. Special Rapporteur on the Right to Development, *Children and Future Generations*, ¶ 84, U.N. Doc. A/HRC/57/43 (2024).

274. FREDMAN, *DISCRIMINATION LAW*, *supra* note 268, 217–18.

275. As acknowledged in *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 25, U.N. Doc. A/68/322 (2013).

276. See Commentary, Princ. 5, ¶ 3. See also EDITH BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY* (1989); Edith Brown Weiss, *In Fairness to Future Generations*, 32 *Env't. Sci. & Pol'y for Sustainable Dev.* 7, 7–8 (1990); Edith Brown Weiss, *The Theoretical Framework for International Legal Principles of Intergenerational Equity and Implementation through National Institutions*, in *INTERGENERATIONAL JUSTICE IN SUSTAINABLE DEVELOPMENT TREATY IMPLEMENTATION: ADVANCING FUTURE GENERATIONS' RIGHTS THROUGH NATIONAL INSTITUTIONS* 16, 21–22 (Marie-Claire Cordonier Segger et al. eds., 2021).

277. *E.g.*, Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20, supra* note 260, ¶¶ 8–9.

(a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity.²⁷⁸

Regarding future generations, this substantive model of equality requires an infusion of equality and non-discrimination with an intergenerational awareness, necessitating present generations to facilitate structural changes to ensure that (a) intergenerational equality is achieved through the equitable distribution of the conditions for the realization of rights; (b) future generations' lives are valued equally with the lives and rights of present generations; (c) participation and representation forums ensure that today's decision-making processes sufficiently internalize and represent the rights of future generations; (d) the rights of future generations are safeguarded and accommodated to ensure they have the necessary natural and cultural options, at least comparable to past generations, to achieve their self-chosen life-projects.

(7) To uphold the rights of equality and non-discrimination for present and future generations, Principle 6 (a) holds that States must refrain from any actions or omissions that could reasonably be expected to result in or perpetuate any form of discrimination against future generations.²⁷⁹ Discrimination against future generations includes any distinction, exclusion, restriction, disregard, or differential treatment, whether direct or indirect, based on the grounds of birth, or intersecting grounds of discrimination.²⁸⁰ Such discrimination occurs when it has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise on an equal basis with other generations of any of the rights of future generations, in the absence of reasonable and objective justification.²⁸¹ The duty bearers of the human rights of future generations must be sensitive to the systemic nature of discrimination encountered by both future generations and disadvantaged groups within the present generation.²⁸² If left unaddressed, systemic discrimination will persist, causing future generations to face entrenched forms of discrimination rooted in laws, policies, practices, and dominant attitudes.²⁸³ These entrenched forms of discrimination create disadvantages for future generations and groups within the present generation while maintaining privileges for dominant groups within the present generation.

(8) Principle 6 (d) provides that States must protect present and future generations against all forms of discrimination by public and private actors,²⁸⁴ and prevent the emergence of new forms

278. *General Comment No. 6: Equality and Non-Discrimination*, U.N. GAOR, Comm. on Rts. People with Disabilities, 19th Sess., ¶¶ 5, 10–11, U.N. Doc. CRPD/C/GC/6 (2018) building on Sandra Fredman, *Substantive Equality Revisited*, 14 *Int'l J. Const. L.* 712–38 (2016).

279. See Commentary, *Princs.* 9, 16, 18(b), 29.

280. CERD, *supra* note 33, art. 1(1); CEDAW, *supra* note 33, art. 1; *General Comment No. 18: Non-Discrimination*, U.N. GAOR, Hum. Rts. Comm., 37th Sess., ¶¶ 7–10, U.N. Doc. HRI/GEN/1/Rev.1 (1989); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20, supra* note 260, ¶¶ 7–10.

281. Hum. Rts. Comm., *General Comment No. 18, supra* note 280, ¶¶ 6–7, 13; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20, supra* note 260, ¶¶ 7–10, 13–14.

282. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20, supra* note 260, ¶ 12.

283. *Id.* See Commentary, *Princ.* 7.

284. See CEDAW, *supra* note 33, art. 2(e); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20, supra* note 260, ¶ 11; *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 22d Sess., ¶¶ 56–57, U.N. Doc. E/C.12/2000/4 (2000); *General Comment No. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 61st Sess., ¶ 9, U.N. Doc. E/C.12/GC/24 (2017); *General Recommendation No. 29: Descent*, U.N. GAOR, Comm. on Elim. Racial

of discrimination.²⁸⁵ These would include, for example, the deployment of surveillance and data-gathering technologies, which have disadvantageous implications for a range of human rights, including the rights of the security of the person, the right to work, and just and favorable conditions of work.²⁸⁶ If unregulated and not applied within the normative parameters of human rights, these technologies can perpetuate existing forms of racialized and gendered discrimination or generate new patterns of disadvantage, constituting discrimination against present and future generations.²⁸⁷

(9) Principle 6 (b) stresses that special measures, in any form of law, policy, or practice, are not contrary to equality and non-discrimination but are integral to achieving substantive equality for future generations and disadvantaged groups within the present generation.²⁸⁸ These special measures must aim to diminish or eliminate conditions that cause or perpetuate intergenerational discrimination against future generations. These measures must also seek to ameliorate the disadvantageous conditions of individuals or groups encountering systemic discrimination so as to stop, prevent, and ultimately eliminate the transmission of discrimination across generations. The special measures must be continued until the full and equal enjoyment of human rights is achieved for present generations in law and in practice and until conditions are achieved that do not inhibit the ability of future generations to exercise and enjoy their rights. The special measures may be of a permanent nature where it pertains to, for example, the ongoing structural adjustments necessary to realize the rights of people with disabilities, including future generations of people with disabilities,²⁸⁹ where the measures must be responsive to changing circumstances.²⁹⁰

(10) Principle 6 (d) further underscores that States must take special measures to eliminate and prevent all forms of discrimination against groups and peoples that have experienced historical and systemic forms of discrimination such as slavery, colonialism, racism, and patriarchy. This aligns with principle 1 of the 1972 Stockholm Declaration, which asserts that the perpetuation of “*apartheid*, racial segregation, discrimination, colonial and other forms of oppression and

Discrim., 61st Sess., ¶¶ 1(a), 7, 8, U.N. Doc. A/57/18 (2002); *General Recommendation No. 28: Core Obligations*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 47th Sess., ¶ 13, U.N. Doc. CEDAW/C/GC/28 (2010); Comm. on Rts. Child, *General Comment No. 16*, *supra* note 75, ¶¶ 13–14. See also Commentary, Princ. 25.

285. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20*, *supra* note 260, ¶ 38; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 28*, *supra* note 284, ¶ 8.

286. See Commentary, Princ. 17(l).

287. Comm. on Elim. Discrim. Against Women, *General Recommendation No. 35*, *supra* note 206, ¶ 20; *General Recommendation No. 38: Trafficking in Women and Girls in the Context of Global Migration*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 80th Sess., ¶¶ 12, 30, 36–37, 71–74, U.N. Doc. CEDAW/C/GC/38 (2020); *General Recommendation No. 36: Preventing and Combating Racial Profiling by Law Enforcement Officials*, U.N. GAOR, Comm. on Elim. Racial Discrim., 102d Sess., ¶¶ 12, 31, 35, U.N. Doc. CERD/C/GC/36 (2020); *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, Ashwini K.P., *Artificial Intelligence and Racial Discrimination*, U.N. H.R.C., 56th Sess., Agenda Item 3, U.N. Doc. A/HRC/56/68 (2024).

288. Hum. Rts. Comm., *General Comment No. 18*, *supra* note 280, ¶ 10; CERD, *supra* note 33, arts. 1(4), 2(2); *General Recommendation No. 32: Meaning and Scope of Special Measures*, U.N. GAOR, Comm. on Elim. Racial Discrim., 75th Sess., U.N. Doc. CERD/C/GC/32 (2009); CEDAW, *supra* note 33, arts. 3, 4; *General Recommendation No. 5: Temporary Special Measures*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 7th Sess., U.N. Doc. A/38/45 (1988).

289. 2024 UN Declaration on Future Generations, *supra* note 8, guid. princ. 8.

290. CRPD, *supra* note 33, art. 5(4); Comm. on Rts. People with Disabilities, *General Comment No. 6*, *supra* note 278, ¶¶ 28–29.

foreign domination stand condemned and must be eliminated” as the “solemn responsibility” of present generations to foster conditions for present and future generations to enjoy the fundamental rights to “freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”²⁹¹ To foster conditions for present and future generations to enjoy their rights necessitates redressing the continuing impacts of historical injustices to ensure that present and future generations are not subject to similar human rights violations and abuses, as stipulated in Principle 6 (d). The African Commission has stated that the origins of several provisions in the African Charter:

may be traced to colonialism, during which the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for Africans themselves, depriving them of their birthright and alienating them from the land. The aftermath of colonial exploitation has left Africa's precious resources and people still vulnerable to foreign misappropriation.²⁹²

(11) Guiding principle 9 of the UN 2024 UN Declaration on Future Generations stresses that securing a “prosperous and sustainable future” requires the “elimination of racism, racial discrimination, xenophobia and related intolerance, as well as the achievement of racial equality and the empowerment of all people.”²⁹³ The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Tendayi Achime, in the report on reparations for racial discrimination rooted in slavery and colonialism, has made the important link between the historical roots of present injustices, which have been systemically carried over as past and present generations have not sufficiently reversed “inequitable trends.”²⁹⁴ Tendayi Achime noted that “the racial subordination of black people, consolidated during the peak of chattel slavery, persisted for generations, and remains in effect today.”²⁹⁵ The intergenerational injustices stemming from South Africa’s colonial and apartheid history have also been acknowledged by the South African Constitutional Court, which stated:

Generations of children born and yet to be born will suffer the consequences of poverty, of malnutrition, of homelessness, of illiteracy and disempowerment generated and sustained by the institutions of apartheid and its manifest effects on life and living for so many.²⁹⁶

The practices that the International Court of Justice has held to constitute plausible acts of genocide during the current war on Gaza²⁹⁷ further illustrate the “historical patterns” of a “long-standing settler colonial process of erasure” and discrimination, where the “incalculable collective trauma will be experienced for generations to come.”²⁹⁸ The Special Rapporteur on

291. 1972 Stockholm Declaration, *supra* note 94.

292. SERAC v. Nigeria, Afr. Comm’n H.P.R., ¶ 56 (2001) (referring to art. 21 of the African Charter, *supra* note 144, especially art. 21(5) requiring the elimination of “all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable . . . peoples to fully benefit from the advantages derived from their national resources”).

293. 2024 UN Declaration on Future Generations, *supra* note 8, commit. 14.

294. *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Reparations for Racial Discrimination Rooted in Slavery and Colonialism*, Tendayi Achime, U.N. GAOR, 74th Sess., Agenda Item 3, ¶ 23, U.N. Doc. A/74/321 (2019).

295. *Id.*

296. AZAPO, 1996 (4) SA 671 (CC) ¶ 43 (S. Afr.).

297. Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Provisional Measures, 2024 I.C.J. 192, 18, ¶ 54 (Jan. 26).

298. *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, An Anatomy of a Genocide, Francesca Albanese*, U.N. H.R.C., 55th Sess., Agenda Item 3, sum., ¶ 95, U.N. Doc. A/HRC/55/73 (2024). See also Economic and Social Repercussions of the Israeli Occupation on the Living Conditions of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem, and of the Arab Population in the Occupied Syrian Golan, U.N. GAOR, U.N. ECOSOC, ¶ 130, U.N. Doc.

the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, has stated that “[t]he ongoing Nakba must be stopped and remedied once and for all,” which is “an imperative owed to the victims of this highly preventable tragedy, and to future generations in that land.”²⁹⁹

(12) The Special Rapporteur on the rights of Indigenous Peoples, José Calí Tzay, highlighted that Indigenous Peoples “continue to experience the legacy of colonization and intergenerational trauma.”³⁰⁰ The Special Rapporteur further indicated that it is vital to consider the human rights violations of Indigenous women and girls in light of the “unique historical experiences of indigenous communities” because many forms of violence and abuse have a “strong intergenerational element,” with “patterns of violations” instituted by colonization being sustained by “post-colonial power structures and State practices.”³⁰¹ To strengthen the intergenerational solidarity duties to redress the continuing reverberations of historical injustices against Indigenous Peoples, the Inter-American Court of Human Rights emphasized that these duties also extend to past generations, honoring the suffering and sacrifices they made and stated that:

No one would dare to deny the duty that we have, the living beings, to contribute to construct a world in which future generations find themselves free from the violations of human rights which victimized their predeces[s]ors (the guarantee of non-repetition of past violations).³⁰²

(13) The duty bearers of the human rights of future generations must also eliminate deeply entrenched discriminatory gender norms sustained by centuries of patriarchal violence and oppression. Principle 1 of the 2023 UN System Common Principles on Future Generations explicitly links the importance of the obligation to “uphold human dignity and gender equality – for both present and future generations.”³⁰³ It further establishes that the “basis for our moral obligation to future generations and gender equality lies in the concern and respect that we owe to all humans regardless of where and when they may be born.”³⁰⁴ The Committee on the Elimination of Discrimination against Women has on several occasions indicated that States must eliminate the “intergenerational harm” that flows from widespread forms of gender-based violence.³⁰⁵ States must therefore strengthen and accelerate efforts to attain gender equality by

A/78/127-E/2023/95 (June 30, 2023) (referring to the “cumulative, multilayered and *intergenerational impact* on the Palestinian society, economy, and environment and have caused the deterioration of the living conditions of the Palestinians”) (emphasis added), cited by the I.C.J. as support for the finding that Israel’s settlement policy obstructs the right of Palestinians to self-determination in *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion, 2024 I.C.J. ¶¶ 180–229, 242 (July 19, 2024) (holding that Israel’s legislation and measures are discriminatory based on race, religion, and ethnic origin in violation of ICCPR, *supra* note 14, arts. 2(1), 26; ICESCR, *supra* note 14, art. 2(2); CERD, *supra* note 33, art. 2).

299. Special Rapporteur on the Situation of Human Rights in the Palestinian Territories, *Anatomy of a Genocide*, ¶ 95, U.N. Doc. A/HRC/55/73 (2024).

300. *Report of the Special Rapporteur on Rights of Indigenous Peoples, Indigenous Peoples Living in Urban Areas*, José F. Calí Tzay, U.N. GAOR, 76th Sess., Agenda Item 75(b), ¶ 4, U.N. Doc. A/76/202 (2021).

301. Special Rapporteur on the Rights of Indigenous Peoples, *Indigenous Women and Knowledge*, ¶ 12, U.N. Doc. A/HRC/51/28 (2022).

302. *Bámaca-Velásquez v. Guat.*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶¶ 6–14, 22 (Nov. 25, 2000) (separate opinion by Cançado Trindade, J.).

303. *U.N. System Common Principles on Future Generations* princ. 1, U.N. C.E.B. for Coordination, 1st Reg. Sess., U.N. Doc. CEB/2023/1/Add.1 (May 4, 2023).

304. *Id.*

305. *General Recommendation No. 32*, *supra* note 69, ¶ 54; *General Recommendation No. 36*, *supra* note 70, ¶ 28; *General Recommendation No. 39*, *supra* note 39, ¶ 40.

safeguarding the rights of present³⁰⁶ and future generations of women and girls. Accelerating efforts to eliminate gender-based violence has intergenerational benefits because “[i]nequalities and discrimination ultimately contribute to health and other inequalities later in life and to the intergenerational transmission of disadvantage.”³⁰⁷

(14) Principle 6 (d) emphasizes that special measures must include the elimination and prevention of the intergenerational transmission of inequality and poverty. States must accelerate their efforts by prohibiting and addressing discrimination on the grounds of economic and social situation, property, or social origin.³⁰⁸ The UN Secretary-General’s report on intergenerational solidarity and the needs of future generations asserts that “[p]overty eradication is not only about intragenerational equity but also about intergenerational equity” because impoverished people “are likely to remain poor into the next generation.” The report further shows:

sustainable development does not endorse the sacrifice of the legitimate aspirations of the poorest in the name of future generations. At the same time, this in no way implies that the needs of present generations always enjoy priority over those of future generations; at the very least, the poorest and most vulnerable should not be called upon to make sacrifices for the long-term good of humanity.³⁰⁹

Special measures must incorporate the principle of intergenerational equity to effectively operationalize these grounds of discrimination, addressing both the short- and long-term impacts of poverty and inequality.³¹⁰ This requires addressing the structural causes that perpetuate cycles of poverty, ensuring that people do not repeatedly fall in and out of poverty and ultimately breaking the persistent transmission of poverty and inequality across generations.³¹¹

(15) Edith Brown Weiss has argued that it is “important to *develop criteria* to ensure that both intragenerational equity and intergenerational equity are addressed.”³¹² The Committee on Economic, Social and Cultural Rights has indicated that equality and non-discrimination are central criteria, requiring duty bearers to pay particular attention to marginalized and disadvantaged groups, as well as “systemic forms of discrimination or social exclusions that perpetuate inter-generational poverty” to ensure the enjoyment of Covenant rights.³¹³ The Principles—in their entirety—place equality and non-discrimination provisions as central criteria

306. 2024 UN Declaration on Future Generations, *supra* note 8, guid. princ. 7.

307. *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Right to Health in Early Childhood, Dainius Pūras*, U.N. GAOR, 70th Sess., Agenda Item 69(b), ¶¶ 67, 76, U.N. Doc. A/70/213 (2015).

308. *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Civil and Political Rights Violations of the Poor, Philip Alston*, U.N. GAOR, 72d Sess., Agenda Item 73, ¶¶ 62–69, U.N. Doc. A/72/50 (2017); *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Banning Discrimination on Grounds of Socio-Economic Disadvantage: An Essential Tool in the Fight Against Poverty, Olivier De Schutter*, U.N. H.R.C., 50th Sess., Agenda Item 3, ¶¶ 15–23, U.N. Doc. A/HRC/50/38/Add.5 (2022).

309. *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 16, U.N. Doc. A/68/322 (2013).

310. See Commentary, Princ. 7.

311. See, e.g., Alberto Coddou McManus, *Addressing Poverty through a Transformative Approach to Anti-Discrimination Law in Latin America*, in *LAW AND POLICY IN LATIN AMERICA: TRANSFORMING COURTS, INSTITUTIONS, AND RIGHTS* 221–33 (Pedro Fortes et al. eds., 2017); Gideon Basson, “Fortune” as a Ground of Discrimination under the African Charter on Human and Peoples’ Rights, in *HUMAN RIGHTS ADJUDICATION IN AFRICA: CHALLENGES AND OPPORTUNITIES WITHIN THE AFRICAN UNION AND SUB-REGIONAL HUMAN RIGHTS SYSTEMS* 203–39 (Alejandro Fuentes & Annika Rudman eds., 2024); OLIVIER DE SCHUTTER ET AL., *THE ESCAPE FROM POVERTY: BREAKING THE VICIOUS CYCLES PERPETUATING DISADVANTAGE* 57–63 (2023). See also 2024 UN Declaration on Future Generations, *supra* note 8, guid. princ. 3.

312. Brown Weiss, *International Legal Principles of Intergenerational Equity*, *supra* note 276, at 23 (emphasis added).

313. *Statement, Pledge to Leave No One Behind*, ¶ 12(a), U.N. Doc. E/C.12/2019/1 (2019).

to ensure that both intragenerational and intergenerational inequalities are addressed. For example, when intergenerational burden-sharing is considered, present generations must ensure that this burden does not disproportionately fall on disadvantaged groups,³¹⁴ thereby deepening the existing patterns of inequality and discrimination that will be transmitted to future generations.

(16) Principle 6 (e) establishes that future generations must be free from intergenerational discrimination, providing some concrete but non-exhaustive examples. The importance of non-discrimination for future generations is emphasized in the UNESCO Declaration on Future Generations, which states that the present generation should “refrain from taking any action or measure which would have the effect of leading to or perpetuating any form of discrimination for future generations.”³¹⁵ Principle 6 (e) (i) establishes that the waste, destruction, or unsustainable use of resources essential to human life constitutes intergenerational discrimination against future generations. This is supported by the Human Rights Committee’s conclusion that environmental degradation, climate change, and unsustainable development are among the most urgent risks to the capacity of “present and future generations to enjoy the right to life.”³¹⁶ The Inter-American Court of Human Rights has also held that “guaranteeing the interests of both present and future generations, and the conservation of the environment against its radical degradation, is essential for the survival of humanity.”³¹⁷ States must therefore implement their non-discrimination obligations with an intergenerational commitment built into the normative content of life-supporting rights, which must be “accessible” and “available” to present and future generations.³¹⁸ For example, Catarina de Albuquerque, the Special Rapporteur on the human right to safe drinking water and sanitation, focusing on sustainability in realizing the human rights to water and sanitation for present and future generations, stated:

In order for services to be sustainable, they must be available and accessible to everyone on a continuous and predictable basis, without discrimination. There must be “permanent beneficial change” that flows from quality services and sustained behavioural change, or, in human rights terms, progressive realization towards fully realizing the human rights to water and sanitation for everyone. Once services and facilities have been improved, the positive change must be maintained and slippages or retrogression must be avoided. Services must be available for present and future generations and the provision of services today should not compromise the ability of future generations to realize the human rights to water and sanitation.³¹⁹

(17) Principle 16 (e) (ii) indicates that future generations encounter discrimination when the burden of addressing and responding to the crises generated by past and present generations is shifted onto future generations.³²⁰ Throughout the Principles, the discriminatory burden shifting is highlighted in various contexts affecting future generations’ rights, including current environmental, economic, and social crises.³²¹ For example, present generations shift environmental burdens onto future generations through the use of fossil fuels, deforestation

314. 2024 UN Declaration on Future Generations, *supra* note 8, actn. 27. See Commentary, Princ. 6(e)(ii).

315. UNESCO Declaration on Future Generations, *supra* note 88, art. 11.

316. *General Comment No. 36*, *supra* note 62, ¶ 62.

317. *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 129 (2023).

318. *E.g.*, Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 12*, *supra* note 39, ¶ 7.

319. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Sustainability*, ¶ 20, U.N. Doc. A/HRC/24/44 (2013) (citations omitted).

320. See, e.g., *Verein Klimaseniorinnen v. Switz.*, App. No. 53600/20, Eur. Ct. H.R., ¶ 420 (2024).

321. See Commentary, Princs. 20(c)(v)–(vi), 24(g).

activities, and pollution, which contribute to climate change, leading to severe ecological degradation. Future generations will bear the brunt of the actions of past and present generations through increased natural disasters, loss of biodiversity, and extreme weather conditions. The delay of targeted climate action or prioritizing short-term economic gains over long-term sustainability exemplifies discriminatory burden shifting. Future generations also encounter intergenerational discrimination when, for example, current economic and financial crises are unsustainably addressed through the accumulation of large national debts, which future generations will have to pay off. Future generations' right to social security is violated when there is no system in place to ensure that benefits are sustainably planned, integrating future planning of social risks and contingencies for both present and future generations. They will also be disproportionately burdened by the present generation's neglect in providing and maintaining high-quality and available social services. As a result, future generations will face the challenge of rebuilding these systems while dealing with the long-term consequences of current neglect or regulatory failure. These consequences include lower educational attainment, poorer health outcomes, unaffordable housing, and increased living costs, exacerbating economic inequality and making it increasingly challenging to address as time progresses.

(18) Principle 6 (2) (iii) indicates that discounting the impacts and burdens of present conduct on the lives and rights of future generations undermines the equal moral worth of all human beings intergenerationally. In *Minors Oposa v. Factoran*, the Supreme Court of the Philippines warned that the State's failure to preserve a healthy ecology and protect public health would leave future generations inheriting "nothing but the parched earth incapable of sustaining life."³²² Similarly, in *Future Generations v. Colombian Minister of Environment*, the Supreme Court of Colombia held that the present generation's actions, resulting in the increasing deterioration of the environmental conditions for a "dignified life," are an attack on present and "future life" to exercise the "rights to water, to breathe pure air, and to enjoy a healthy environment."³²³ In *Neubauer v. Germany*, the Federal Constitutional Court of Germany ruled that the legislative targets for reducing greenhouse gas emissions were inadequate to ensure the protection of the "natural foundations of life" as a responsibility owed toward future generations.³²⁴ The Court held that the present generation's overspending of their carbon dioxide allowance infringes on the "intertemporal guarantees of freedom."³²⁵ The Court emphasized that the intertemporal guarantees of freedom must simultaneously preserve the natural foundations of life for future generations while considering how burdens should be "spread out between different generations."³²⁶ The Court further underscored that the duty to protect and preserve the natural foundations of life requires treating them with such care that future generations, who, in their turn, must also aim to continue preserving these foundations, are not compelled to make extreme sacrifices. Crucially, the Court held that it is essential to avoid a shortsighted and imbalanced distribution of intergenerational burdens that would disadvantage future generations.³²⁷

322. *Minors Oposa v. Factoran*, 1993, 224 SCRA 792, ¶ 29 (Phil.).

323. *Future Generations v. Colom. Min. of Env't*, *supra* note 22, at 13.

324. *Neubauer v. Germ.*, *supra* note 22, ¶ 193.

325. *Id.* ¶¶ 122, 183.

326. *Id.* ¶ 193.

327. *Id.* ¶ 194. *See also* *Kim v. S. Kor.*, 2020Hun-Ma389 (S. Kor. Const. Ct.).

7. *Intragenerational and Intergenerational Human Rights Obligations*
 - a) *States must address and remedy intragenerational human rights violations – that is violations affecting members of present generations – in order to both realize the human rights of present generations and to avoid transmitting these violations to future generations.*
 - b) *States must respect and ensure the full enjoyment of children’s human rights in the present as well as ensuring that their human rights in the future are not jeopardized, and refrain from conduct that would undermine their human rights as adults.*
 - c) *To meet their obligations to future generations, States must necessarily impose reasonable restrictions on activities that undermine the rights of future generations, including the unsustainable use of natural resources and the destruction of Nature. Such restrictions must not impair or nullify the enjoyment of human rights of present generations; must rectify the vastly disproportionate levels of control over and use of resources by some members of the present generation; and not impose disproportionate burdens on disadvantaged groups.*

Commentary

(1) Intra- and intergenerational equity are principles of international environmental law, closely linked to sustainable development.³²⁸ Intergenerational equity refers to the temporal dimension of sustainable development, requiring attention to the impacts of development activities on future generations and the equitable distribution of benefits and burdens of development between present and future generations.³²⁹ According to Megan Donald, this forward-looking approach is particularly significant for environmental concerns, as environmental damage “continues to produce effects over time, well beyond the time span of the current generation.”³³⁰ Intragenerational equity refers to the equitable distribution of the benefits and burdens of development within present generations. As Alexandre Kiss and Dinah Shelton explain:

states and the international community must fairly allocate and regulate scarce resources to ensure that the benefits of environmental resources, the costs associated with protecting them, and any degradation that occurs (i.e., all the benefits and burdens) are equitably shared by all members of society.³³¹

(2) As noted above, the concepts of intra- and intergenerational equity are closely associated with international environmental law and the principles of sustainable development. These concepts are also integrally linked to human rights such as equality and non-discrimination, ESCRs, and the right to a clean, healthy and sustainable environment.³³² The obligation to ensure that human rights are enjoyed fully and equally amongst members of present generations, as well as between present and future generations, gives rise to intra- and intergenerational human rights

328. SUMUDU ATAPATTU, HUMAN RIGHTS APPROACHES TO CLIMATE CHANGE 115 (2016); ELOISE SCOTFORD, ENVIRONMENTAL PRINCIPLES AND THE EVOLUTION OF ENVIRONMENTAL LAW 80 (2017); Virginie Barral, *The Principle of Sustainable Development*, in PRINCIPLES OF ENVIRONMENTAL LAW 103, 106 (Ludwig Krämer & Emanuela Orlando eds., 2018); 1987 Brundtland Report, *supra* note 88, ch. II, ¶ 1 (defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”).

329. Isabelle Michallet, *Equity and the Interests of Future Generations*, in PRINCIPLES OF ENVIRONMENTAL LAW 150, 154 (Ludwig Krämer & Emanuela Orlando eds., 2018); Edith Brown Weiss, *In Fairness to Future Generations and Sustainable Development*, 8 Am. U. Int’l L. Rev. 19, 20–23 (1992).

330. Donald, *Greening the Covenant*, *supra* note 240, at 101. See Commentary, Princ. 2, ¶ 16.

331. ALEXANDRE C. KISS & DINAH SHELTON, INTERNATIONAL ENVIRONMENTAL LAW 15 (3d ed., 2004).

332. See, e.g., Commentary, Princs. 2, 4, 6.

obligations.³³³ Intra- and intergenerational human rights obligations aim to create conditions that will enable the full and equal enjoyment of all human rights, each having a different temporal focus.³³⁴ This inevitably requires distributive justice within the present generation,³³⁵ and between present and future generations.³³⁶

(3) For Edith Brown Weiss, the interests of future generations are also closely linked to the needs of impoverished people and communities.³³⁷ She argues that intergenerational equity cannot be achieved without a corresponding commitment to intragenerational equity.³³⁸ As with intra- and intergeneration equity,³³⁹ it is impossible to fulfill intergenerational human rights obligations without fulfilling intragenerational human rights obligations. As stated in *Our Common Agenda: Policy Brief 1: To Think and Act for Future Generations* of the UN Secretary-General:

Upholding the rights and meeting the needs of those alive today is a precondition for securing a better future. Our first action on behalf of future generations must therefore be to fulfil the commitments to those currently alive, in a sustainable way and with more emphasis on long-term thinking.³⁴⁰

Later, the Policy Brief aptly notes, “[i]f the human rights of present generations were fully realized we would be much better positioned to safeguard the future.”³⁴¹ Historical and present-time human rights violations generate cycles of trauma, systemic disadvantage, and poverty that transmit across generations. Thus, the descendants of groups and peoples that have experienced historical human rights violations are most likely to be disadvantaged and at greater risk of human rights violations in the future.³⁴²

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333. *Pulp Mills (Arg. v. Uru.)*, 2010 I.C.J. 14, ¶ 120 (separate opinion by Cançado Trindade, J.) (“There is a complementarity between recognized human rights and the proposed intergenerational rights.”).
334. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Sustainability*, ¶ 11, U.N. Doc. A/HRC/24/44 (2013); Aaron M. Griffith, *Intergenerational Rights and the Problem of Cross-Temporal Relations*, 83 *Erkenntnis* 693–710 (2018).
335. See Commentary, Princ. 6(d); G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, Sustainable Development Goal (SDG) 10, adopted Sept. 25, 2015, U.N. GAOR, 70th Sess., Agenda Items 15 & 16, ¶¶ 10.1–10.c, U.N. Doc. A/RES/70/1 (Oct. 21, 2015) [hereinafter 2030 Agenda for Sustainable Development]; *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 18, U.N. Doc. A/68/322 (2013); *Gloucester Resources Ltd. v. Min. of Planning*, [2019] NSWLEC 7, ¶¶ 398, 414–16 (Austl.); Michallet, *Equity and the Interests of Future Generations*, *supra* note 329, at 154; Brown Weiss, *In Fairness to Future Generations*, *supra* note 329, at 7; BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW*, *supra* note 276, at 28. For an exposition of the fulfillment of basic needs of present generations within planetary boundaries, see Jason Hickel, *Is it Possible to Achieve a Good Life for All Within Planetary Boundaries?*, 40 *Third World Q.* 18–35 (2018); Sigrun I. Skogly, *The Right to Continuous Improvement of Living Conditions and Human Rights of Future Generations – A Circle Impossible to Square?*, in *THE RIGHT TO CONTINUOUS IMPROVEMENT OF LIVING CONDITIONS: RESPONDING TO COMPLEX GLOBAL CHALLENGES* 147–63 (Jessie Hohmann & Beth Goldblatt eds., 2021); JEFFREY P.M. PHILLIPS, *ACTUALIZING HUMAN RIGHTS: GLOBAL INEQUALITY, FUTURE PEOPLE, AND MOTIVATION* 43–86 (2020).
336. *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 10, U.N. Doc. A/68/322 (2013); *Urgenda v. Neth.* 2015, *supra* note 122, ¶ 4.57 (with reference to the principle of equity under art. 3 of the UNFCCC, *supra* note 98); *Neubauer v. Germ.*, *supra* note 22, ¶ 183 (“Under certain conditions, the Basic Law imposes an obligation to safeguard fundamental freedom over time and to spread the opportunities associated with freedom proportionately across generations.”).
337. Brown Weiss, *In Fairness to Future Generations*, *supra* note 329, at 9.
338. *Id.* at 9. See also ATAPATTU, *HUMAN RIGHTS APPROACHES TO CLIMATE CHANGE*, *supra* note 328, at 116–17 (2016).
339. Brown Weiss, *International Legal Principles of Intergenerational Equity*, *supra* note 276, at 23.
340. *Our Common Agenda: Policy Brief 1*, *supra* note 8, ¶ 13.
341. *Id.* ¶ 15.
342. For empirical data showcasing the global trends in intergenerational transmission of disadvantage and poverty as it relates to education and income, see, e.g., Ambar Narayan & Roy Van der Weide et al., *Fair Progress?*

(4) In arguing for a strong relationship between intra- and intergenerational human rights obligations arising out of the demands of equity, Edith Brown Weiss acknowledged that there would sometimes be a need for “trade-offs” when the resources required to promote intragenerational equity reduce the resources available to address long-term concerns.³⁴³ However, she observed that “[t]oo often, long-term costs are accrued for short-term benefits which often go only to the few.”³⁴⁴ As stipulated in the Commentary to Principle 5, Brown Weiss developed criteria to assess the trade-offs between the intra- and intergenerational demands of justice, focusing on the advancement of conditions that will provide future generations comparable “options,” “quality,” and roughly equal or “non-discriminatory access” to natural and cultural resources to have the flexibility to self-determine their own identified goals.³⁴⁵

(5) Intragenerational human rights obligations thus necessitate the full realization of all human rights and freedoms to the present generation.³⁴⁶ States must address and remedy intragenerational human rights violations to not only realize the human rights of present generations but also to avoid transmitting these violations to future generations.³⁴⁷ States must take measures³⁴⁸ to facilitate the just redistribution of resources, benefits, and burdens across different disadvantaged groups.³⁴⁹

(6) Principle 7 (b) acknowledges the special obligation of States to ensure that children’s human rights are realized both as children and over the course of their entire lifespans. The conduct of State and private actors today has a profound effect on whether children will be able to enjoy all the human rights to which they are entitled in the future, including through the course of their lives as future adults. States must thus respect and ensure the full enjoyment of children’s human rights both in the present and in a way that protects their rights as future adults.³⁵⁰ States have an obligation not only to fulfill the human rights to which children are entitled in their capacity as children but also to take positive measures to ensure that they will be able to enjoy their human rights fully in the future.³⁵¹ In *Sacchi v. Argentina*, the Committee on the Rights of the Child emphasized that a State’s failure to take measures to prevent foreseeable human rights harm

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- Economic Mobility Across Generations Around the World*, World Bank Grp., Equity & Dev. Ser. 26, 34, 47 (2018); *U.N. Sustainable Development Goals Report 2022*, 26, 34, 47 (2022). See Commentary, Princ. 6(d).
343. Brown Weiss, *International Legal Principles of Intergenerational Equity*, *supra* note 276, at 23.
344. *Id.*
345. Brown Weiss, *Climate Change and Intergenerational Equity*, *supra* note 240, at 616. See Commentary, Princ. 5, ¶ 3.
346. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Sustainability*, ¶¶ 11, 20, U.N. Doc. A/HRC/24/44 (2013).
347. Comm. on Econ., Soc. & Cult. Rts., *Statement, Pledge to Leave No One Behind*, ¶ 12(a), U.N. Doc. E/C.12/2019/1 (2019); Special Rapporteur on Extreme Poverty and Human Rights, *Taxation Policies*, ¶¶ 37–38 U.N. Doc. A/HRC/26/28 (2014); UNESCO Declaration on Future Generations, *supra* note 88, pmb. ¶¶ 11, 17; Elisa Morgera, *Under the Radar: The Role of Fair and Equitable Benefit-Sharing in Protecting and Realizing Human Rights Connected to Natural Resources*, 23 *Int’l J. Hum. Rts.* 1098–139 (2019).
348. See Commentary, Princ. 6(d).
349. See Commentary, Princ. 6; *Analytical Study on the Relationship Between Climate Change and the Human Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, U.N. H.R.C., 32d Sess., Agenda Items 2 & 3, ¶ 50, U.N. Doc. A/HRC/32/23 (2016).
350. See Commentary, Princ. 1, ¶¶ 3–4.
351. *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 141, 243 (2023).

caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of the State's human rights obligations.³⁵²

(7) Furthermore, in their General Comment 26 on children's rights and the environment with a special focus on climate change, the Committee on the Rights of the Child noted that economic and social development and environmental considerations are fundamental for realizing children's rights.³⁵³ The Committee highlighted that the principle of intergenerational equity recognizes the link between children and future generations. In this regard, the Committee says, "[w]hile the rights of children who are present on Earth require immediate urgent attention, the children constantly arriving are also entitled to the realization of their human rights to the maximum extent."³⁵⁴ The Committee indicated that States must consider in their child rights impact assessments the short-, medium- and long-term "combined and irreversible impacts, interactive and cumulative impacts and impacts in the different stages of childhood."³⁵⁵ These consequences encompass foreseeable threats to the environment that arise from activities or omissions of States today, with their complete implications potentially only transpiring much later.³⁵⁶ For example, the Committee notes that the "effects of environmental contaminants may even persist in future generations [and] States should consistently and explicitly consider the impact of exposure to toxic substances and pollution in early life."³⁵⁷

(8) Principle 7 (c) provides for the necessary implication of the abovementioned principles, namely, that reasonable restrictions must be imposed on activities that undermine or may undermine the rights of future generations.³⁵⁸ These activities include the unsustainable and inequitable use of resources and activities that lead to or may lead to the destruction of Nature.³⁵⁹ The sustainable use of natural resources is an essential aspect of intergenerational equity and co-exists alongside conservation efforts. Importantly, the sustainable use of natural resources is a guiding factor in linking intra- and intergenerational human rights obligations.³⁶⁰ The sustainable

352. Communication No. 104/2019 (*Sacchi v. Arg.*), adopted Sept. 6–24, 2021, U.N. GAOR, Comm. on Rts. Child, 88th Sess., ¶ 10.6, U.N. Doc. CRC/C/88/D/104/2019 (2021) [hereinafter *Sacchi v. Arg.*].

353. *General Comment No. 26*, *supra* note 78, ¶ 9.

354. *Id.* ¶ 11.

355. *Id.* ¶ 76.

356. *Id.* ¶¶ 11, 20, 69, 84, 98(d).

357. *Id.* ¶ 24.

358. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 28. Here the Committee recommends:

States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related ecosystems by substances such as radiation, harmful chemicals and human excreta; . . . (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity. (citations omitted)

359. Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., ¶¶ 2, 59.

360. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 12*, *supra* note 39, ¶ 7. The Committee elaborated:

The notion of *sustainability* is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. The precise meaning of "adequacy" is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while "sustainability" incorporates the notion of long-term availability and accessibility.

use of natural resources requires the prevention of unrestricted exploitation of natural resources in order to safeguard their preservation and avoid depletion and irreversible harm.³⁶¹

(9) The principle of sustainable use appears in several international treaties and standards.³⁶² The Convention on Biological Diversity in Article 2 defines sustainable use as the utilization of the “components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.”³⁶³ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, has also elaborated on the principle of sustainable use in the context of the linkages between human and planetary health, and global food systems, recommending that States:

Advance both human and planetary health and ensure that current food systems do not compromise the ability of current and future generations to secure their own rights to food, health and livelihoods. States must also promote the conservation, protection and restoration of the health and integrity of the planet’s ecosystems, including through sustainable healthy food production and consumption based on ecologically sound methods within planetary boundaries, while ensuring resilience to future crises, including those caused by conflict, pandemics and climate change.³⁶⁴

(10) States must impose reasonable restrictions on activities that lead to or may lead to the long-term decline and depletion of natural resources. Restrictions would be unreasonable where they impair or nullify the enjoyment of human rights of present generations, particularly when such restrictions impose a disproportionate burden on members of the present generations facing structural exclusion. Where States impose restrictions on members of the present generation, they should do so in a way that does not place disproportionate burdens on marginalized and disadvantaged groups.³⁶⁵

(11) Reasonable restrictions include rectifying the disproportionate levels of control over and use of resources by members of the present generation within States but also between States. In fulfilling these duties, States must seek to balance the interests of developed and developing States by acknowledging common responsibilities and encouraging the participation of developing countries in addressing shared problems, while also recognizing the differentiated responsibilities and respective capabilities of developing countries due to their developmental needs and limited capacities.³⁶⁶

361. *Chinnappa v. India*, (2002) INSC 453, S.C.I., 8, ¶ 2 (Oct. 30, 2002) (India) (addressing the prevention of unrestricted exploitation of flora and fauna biodiversity “hotspots” to safeguard preservation and avoid depletion and irreversible harm for present and future generations).

362. *E.g.*, 2030 Agenda for Sustainable Development, *supra* note 335, SDG 14 (“Conserve and sustainably use the oceans, seas and marine resources for sustainable development”), *id.* SDG 15 (“Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.”). *See also* International Convention for the Regulation of Whaling *pmb.*, ¶ 1, *singed* Dec. 2, 1946, 161 U.N.T.S. 72 (*entered into force* Nov. 10, 1948).

363. Convention on Biological Diversity, *supra* note 96.

364. *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Food, Nutrition and the Right to Health, Tlaleng Mofokeng*, U.N. GAOR, 78th Sess., Agenda Item 73(b), ¶ 97(l), U.N. Doc. A/78/185 (2023).

365. *See* Commentary, Princ. 6.

366. *Climate Change and the Human Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶ 61, U.N. Doc. A/HRC/32/23 (2016). *See* Commentary, Princ. 24(d), (f), (h).

8. *Intergenerational Duties and Trusteeship*
- a) *Humanity is of the Earth, wholly dependent upon it, and interdependent with it. Every generation lives on the Earth and has an interlinked relationship with Nature and its biodiverse ecosystems. During their time on Earth, each generation must act as trustees of the Earth for future generations. This trusteeship must be carried out in harmony with all living beings and Nature.*
 - b) *Each generation has the duty to protect and sustain the Earth's natural and cultural heritage for future generations.*
 - c) *The principle of trusteeship and intergenerational duties includes the decisions each generation makes about the near-Earth environment and the Moon.*

Commentary

(1) Principle 8 stems from a “partnership among all generations”³⁶⁷ where each generation must act as a trustee, ensuring that future generations inherit their just share of natural resources and cultural heritage, as outlined in Principle 8 (b). The notion of trusteeship posits that the Earth’s natural resources and humanity’s cultural heritage are held in trust and managed by each generation on behalf of future generations.³⁶⁸ Each generation, in turn, becomes a beneficiary of the trusteeship of previous generations.³⁶⁹ The failure to fulfill trusteeship duties seriously threatens the vitality and sustainability of humanity across generations.³⁷⁰ Intergenerational duties and trusteeship thus not only aim to ensure a just inheritance for future generations but also serve as an essential means by which future generations can hold previous generations accountable.³⁷¹

(2) Principle 8 adopted trusteeship as the overarching legal concept, which will encompass the practical application thereof with ethics of stewardship, custodianship, and guardianship in safeguarding, managing, and preserving the resources required for the realization of future generations’ rights.³⁷² The intergenerational duties and trusteeship in Principle 8 find legal expression in the “common heritage of humankind”³⁷³ and are grounded in the equal moral

367. Brown Weiss, *Future Generations and Sustainable Development*, *supra* note 329, at 21.

368. Edith Brown Weiss, *The Planetary Trust: Conservation and Intergenerational Equity*, 11 *Ecology L. Q.* 495, 498 (1984); *Gabčíkovo-Nagymaros Project* (separate opinion by Weeramantry, J.), 1997 I.C.J. 7, 102.

369. See, e.g., *Whaling in the Antarctic* (separate opinion by Cançado Trindade, J.), 2014 I.C.J. at 348, ¶ 42 (quoting another source); Brown Weiss, *In Fairness to Future Generations*, *supra* note 276, at 8.

370. G.A. Res. 76/300, *Human Right to a Clean, Healthy and Sustainable Environment*, ¶¶ 8, 12 (2022); 1987 Brundtland Report, *supra* note 88, ch. I, ¶ 1; Hague Principles on Trusteeship, *supra* note 224, backgr., at 1; World Heritage Convention, *supra* note 89, ¶¶ 2, 3; Gupta et al., *Earth System Boundaries and Earth System Justice*, *Env't Pol.* 1 at 5–8 (2023); Louise du Toit & Louis J. Kotzé, *Reimagining International Environmental Law for the Anthropocene: An Earth System Law Perspective*, 11 *Earth Sys. Governance* 1–10 (2022).

371. Anél A. Du Plessis, *Climate Change, Public Trusteeship and the Tomorrows of the Unborn*, 31 *S. Afr. J. on Hum. Rts.* 269, 274 (2015) (on the accountability function of the public trust doctrine). See Commentary, § IV.

372. Trusteeship, custodianship, guardianship, and stewardship are interrelated concepts that describe and differentiate the responsibilities of present generations to realizing the rights of future generations. Trusteeship entails a formal and entrenched legal duty to hold cultural and natural resources in trust and manage them on behalf of future generations, whereas custodianship, guardianship, and stewardship are not always of a legal character. Trusteeship should be interpreted broadly to include similar concepts as interchangeable or as subsets thereof to allow diverse legal systems and frameworks to operationalize this legal duty according to their specific contexts. See generally Brown Weiss, *Planetary Trust*, *supra* note 368, at 495–581; Du Plessis, *Public Trusteeship and the Tomorrows of the Unborn*, *supra* note 371, at 269–93.

373. E.g., Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction art. 1, adopted Dec. 17, 1970, G.A. Res. 2749 (XXV), U.N. GAOR, 1993d plen. mtg., U.N. Doc. A/RES/2749(XXV) (Dec. 17, 1970) [hereinafter *Seabed and Ocean Floor Principles*];

worth of everyone as being born free and equal within a community of life,³⁷⁴ living in solidarity and harmony with the rights of Nature and all living beings, which makes human life on an intergenerational continuum possible.³⁷⁵ Principle 8 (a) thus recognizes that members of each generation must act as trustees³⁷⁶ with the understanding that the well-being and the intergenerational existence of humanity³⁷⁷ are interdependent with the well-being of all other beings, and that humanity's survival depends on the integrity of the Earth's ecological systems.³⁷⁸ The Special Rapporteur in the field of cultural rights, Karima Bennouna, in the report on the intentional destruction of cultural heritage, highlighted the importance of bequeathing a richer legacy of cultural heritage to avoid violating the rights and receiving the "scorn" of future generations.³⁷⁹

(3) Principle 8 should be interpreted in line with the continued development of international law doctrines of trusteeship, informed by transnational governance models supporting Earth system justice.³⁸⁰ Additionally, Principle 8 draws from Indigenous worldviews and knowledge systems³⁸¹ that support humanity's interconnectedness with and responsibility toward the living biogeological systems of which humanity is but one part and must transmit the living cultural heritage to future generations.³⁸² For instance, the Māori, the Indigenous Peoples of Aotearoa/New Zealand, practice the concept of Kaitiakitanga, which involves the active

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- UNESCO Declaration on Future Generations, *supra* note 88, art. 3 (maintenance and perpetuation of humankind), *id.* art. 8 (common heritage of humankind); UNDRIP, *supra* note 141, pmb. ¶ 3.
374. UDHR, *supra* note 29, art. 1; *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 13, U.N. Doc. A/68/322 (2013).
375. World Charter for Nature pmb., ¶ 5, *adopted* Oct. 28, 1982, G.A. Res. 37/7, U.N. GAOR, 48th plen. mtg., U.N. Doc. A/RES/37/7 (Oct. 28, 1982); Convention on Biological Diversity, *supra* note 96, ¶ 3 ("Affirming that the conservation of biological diversity is a common concern of humankind"); Eritrea Env't Procl. No. 44/1996, art. 5, Eritrea Gaz. (1996) (Eri.); GG art. 20a (Ger.). See Commentary, Princ. 4(d).
376. Hague Principles on Trusteeship, *supra* note 224, princ. 1.1; Brown Weiss, *Planetary Trust*, *supra* note 368, at 501; Fomento Resorts v. Martins (2009) I.N.S.C. 100, ¶ 36 (India) (the "sacred duty of everyone" to take steps to preserve the natural environment); Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter art. 2, *opened for signature* Nov. 7, 1996, 36 I.L.M. 1 (*entered into force* Mar. 24, 2006); Klaus Bosselmann, *Environmental Trusteeship and State Sovereignty: Can They be Reconciled?*, 11 *Transnat'l Legal Theory* 47–61 (2020) (for an exposition of the importance to reconcile environmental trusteeship and state sovereignty). See Commentary, Princ. 24.
377. UNESCO Declaration on Future Generations, *supra* note 88, pmb. ¶ 5.
378. Earth Charter, *supra* note 215, pmb. ¶¶ 1, 2, 5; Hague Principles on Trusteeship, *supra* note 224, backgr., at 1; G.A. Res. 76/300, Human Right to a Clean, Healthy and Sustainable Environment, ¶ 12 (2022); Rights of Mother Earth, *supra* note 215, ¶¶ 5, 6.
379. *Report of the Special Rapporteur in the Field of Cultural Rights, Intentional Destruction of Cultural Heritage as a Violation of Human Rights*, Karima Bennouna, U.N. GAOR, 71st Sess., Agenda Item 68(b), ¶ 76, U.N. Doc. A/71/317 (2016).
380. Hague Principles on Trusteeship, *supra* note 224, princ. 1.2; Klaus Bosselmann, *Human Rights and Responsibilities: Towards the Earth System*, 52 *Env't Pol'y & L.* 213–22 (2022); Joseph Orangias, *Towards Global Public Trust Doctrines: An Analysis of the Transnationalisation of State Stewardship Duties*, 12 *Transnat'l Legal Theory* 550–86 (2021); Laura Ogden et al., *Global Assemblages, Resilience, and Earth Stewardship in the Anthropocene*, 11 *Frontiers in Ecology & Env't* 341–47 (2013); Peter H. Sand, *Sovereignty Bounded: Public Trusteeship for Common Pool Resources?*, 4 *Global Env't Pol.* 47–71 (2004).
381. See Commentary Princ. 2, ¶¶ 26–32, Princ. 11.
382. *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 12, U.N. Doc. A/68/322 ("Nearly all human traditions recognize that the living are sojourners on Earth and temporary stewards of its resources"); Resolution on the Protection of Sacred Natural Sites and Territories, African Comm'n H.P.R. Res. 372 (LX), pmb. ¶ 6 (2017) ("custodian communities, who maintain customary governance systems to protect sacred natural sites and territories, play an essential role in preserving the traditional values of Africa, and require legal recognition and support to do so"); Special Rapporteur on the Rights of Indigenous Peoples, *Indigenous Women and Knowledge*, ¶¶ 28–34, U.N. Doc. A/HRC/51/28 (2022) (pointed out the significant contribution of Indigenous women in preserving cultural heritage).

stewardship and management of natural entities and their environments, including the sky, sea, and land.³⁸³ Various religions and belief systems, including Buddhism,³⁸⁴ Christianity,³⁸⁵ Hinduism,³⁸⁶ and Islam,³⁸⁷ also recognize the importance of environmental stewardship, encouraging adherents to be caretakers of the Earth and its biodiversity.³⁸⁸ Edith Brown Weiss's framework of intergenerational duties and trusteeship further complements Principle 8 by outlining the three mutually supportive components—the conservation of options, quality, and access—that aim to ensure “intergenerational integrity.”³⁸⁹ Intergenerational integrity alerts each generation that their trusteeship carries profound implications for the well-being and opportunities of those who will inherit the world they leave behind.³⁹⁰

(4) The intergenerational duties and trusteeship of Principle 8 (b) have a fiduciary rather than a proprietary character, with each generation vested with the responsibility to act on behalf of and in the interest of future generations.³⁹¹ Each generation's trustees are constituted by various stakeholders, including States, governments, Indigenous Peoples and nations, individuals and communities, civil society, and international organizations.³⁹² These trustees are tasked with overseeing all elements of the Earth's systems, not as exploitable resources, but as essential and interrelated elements of the natural environment.³⁹³ Trustees must therefore manage these

383. Paul-Burke & Rameka, *Kaitiakitanga – Active Guardianship*, *supra* note 163, at 1–6.

384. *Gabčíkovo-Nagymaros Project* (separate opinion by Weeramantry, J.), 1997 I.C.J. 7, 102.

385. Douglas Johnston, *Muslim-Christian Trusteeship of the Earth: What Jesus Can Contribute*, 3 *Religions* 22, 22–28 (2012).

386. Most notable is the work of Gandhi on trusteeship, drawing from fundamental Hindu scriptures (Isavasya Upanishad and the Bhagavad Gita), see, e.g., Okafor & Stella, *Hinduism and Ecology*, *supra* note 175, at 1–11; Bidyut Chakrabarty, *Universal Benefit: Gandhi's Doctrine of Trusteeship*, 48 *Mod. Asian Stud.* 572–608 (2014).

387. Johnston, *Muslim-Christian Trusteeship*, *supra* note 385, at 20–22 (on the Qur'anic teaching on the khilafat al-insan, meaning the trusteeship of humanity); *Gabčíkovo-Nagymaros Project* (separate opinion by Weeramantry, J.), 1997 I.C.J. 7, 108.

388. *Gabčíkovo-Nagymaros Project* (separate opinion by Weeramantry, J.), 1997 I.C.J. 7, 102–08 (for the legal recognition of the relevance of various religions and faith traditions for environmental trusteeship); ANDRIANOS ET AL. EDS., *STEWARDSHIP IN WORLD RELIGIONS*, *supra* note 168 (for several contributions of trusteeship in a diverse set of religions and faith traditions globally).

389. Brown Weiss, *Planetary Trust*, *supra* note 368, at 495. See Commentary, *Princ.* 5, ¶ 3.

390. *Gabčíkovo-Nagymaros Project* (separate opinion by Weeramantry, J.), 1997 I.C.J. 7, 110; KRZNAVIC, *GOOD ANCESTOR*, *supra* note 10, at 71–91.

391. Brown Weiss, *Planetary Trust*, *supra* note 368, at 498 (elaborating on the anthropocentric nature of the fiduciary duty and how it could be developed in a more environmentally conscious framework). See also Michael C. Blumm & Rachel D. Guthrie, *Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision*, 45 *U.C. Davis L. Rev.* 741, 750–56 (2012); EMILY BARRITT, *THE FOUNDATIONS OF THE AARHUS CONVENTION: ENVIRONMENTAL DEMOCRACY, RIGHTS AND STEWARDSHIP* 122 (2020) (for an analysis of how international law could make a shift from an ownership model of trusteeship to a fiduciary model based on Indigenous knowledge systems); Kenya Const. ch. 5, §§ 61(2)–63(3); *Waweru v. Kenya*, High Ct. Nairobi, 1 K.L.R. 677, 677 (H.C.K.), ¶ 31 (2006) (confirmed the fiduciary nature of the public trust doctrine).

392. Du Plessis, *Public Trusteeship and the Tomorrows of the Unborn*, *supra* note 371, at 288. See also 2024 UN Declaration on Future Generations, *supra* note 8, acts. 28–30. For an example of how the trusteeship duties cut across the executive, legislative, and judicial branches, as well as the administrative functions of these branches and local governments, see Nat'l Water Act 36 of 1998, §§ 3(1)–(2) (S. Afr.); Nat'l Env't Mgmt. Act 107 of 1998, §§ 12, 28(5) (S. Afr.); Nat'l Env't Mgmt.: Biodiversity Act 10 of 2004, §§ 3, 85 (S. Afr.); Nat'l Env't Mgmt.: Integrated Coastal Mgmt. Act 24 of 2008, §§ 2(c), 3(a), 12(a) (S. Afr.).

393. For an analysis of the abuses of the trusteeship doctrine based on imperial property regimes, see William Bain, “Repaying the National Debt to Africa”: *Trusteeship, Property and Empire*, 59 *Theoria: J. Soc. & Pol. Theory* 1–20 (2012); Melanie Murcott, *The Role of Environmental Justice in Socio-economic Rights Litigation*, 132 *S. Afr. L. J.* 875, 903–04 (2015). For expositions that the Earth's resources are ecological gifts and treasures that

resources in a way that recognizes them as essential preconditions for human life and culture, ensuring they are fairly and responsibly distributed and preserved for present and future generations. Each generation is also responsible for safeguarding and upholding the living archive of cultural customs and traditions of the human species to be transmitted to future generations.³⁹⁴ In order to fulfill these trusteeship duties toward future generations, each generation should establish appropriate accountability mechanisms for the representation and participation of future generations.³⁹⁵ An example is *Fuel Retailers Association v. Director-General of Environmental Management*, where the Constitutional Court of South Africa held that it is “the duty of the court to ensure” that trusteeship duties are carried out, as “present generations hold the earth in trust for the next generation.”³⁹⁶

(5) The trusteeship duty to conserve future generations’ “options” requires each generation to create conditions that ensure future generations have sufficient options to adapt to their challenges.³⁹⁷ The Earth Charter asserts that in order to “secure the Earth’s bounty and beauty for present and future generations,” the needs of future generations qualify the “freedom of action of each generation.”³⁹⁸ Securing a broad range of “options” for future generations involves each generation striving to enhance some of the determinants of “adaptive capacity.”³⁹⁹ These conditions must enable a range of options to give future generations the ability to, amongst others, meet the fundamental conditions of human survival and well-being, use and develop suitable technology,⁴⁰⁰ and access knowledge, skills, cultural artifacts,⁴⁰¹ and genetic resources,⁴⁰² while safeguarding the diversity and ecological function of the Earth. Each generation must also work toward conditions that will allow access to adequate financial and

must be sustainably and equitably shared and conserved, see, e.g., KEN COGHILL ET AL. EDS., *FIDUCIARY DUTY AND THE ATMOSPHERIC TRUST* (2012); Earth Charter, *supra* note 215, princ. 3(b).

394. Brown Weiss, *Planetary Trust*, *supra* note 368, at 559. The right to take part or participate in cultural life is recognized in several human rights treaties. E.g., UDHR, *supra* note 29, art. 27; ICESCR, *supra* note 14, art. 15(1)(a); ICCPR, *supra* note 14, art. 19(2). See also 2024 UN Declaration on Future Generations, *supra* note 8, commit. 15. For a discussion on how the doctrine of public trusteeship has been misused to exploit Indigenous Peoples, and the need for the international human rights system to shift toward fiduciary duties to preserve cultural heritage, see Evan Fox-Decent & Ian Dahlman, *Sovereignty as Trusteeship and Indigenous Peoples*, 16 *Theoretical Inquiries L.* 507–33 (2015).
395. Jane Anstee-Wedderburn, *Giving a Voice to Future Generations: Intergenerational Equity, Representatives of Generations to Come, and the Challenge of Planetary Rights*, 1 *Austl. J. Env’t L.* 37–70 (2014). See Commentary, Princ. 22.
396. *Fuel Retailers Ass’n v. Dir.-Gen. Env’t Mgmt.*, 2007 (6) SA 4 (Const. Ct.) ¶ 102 (S. Afr.).
397. Brown Weiss, *Planetary Trust*, *supra* note 368, at 525; Du Plessis, *Public Trusteeship and the Tomorrows of the Unborn*, *supra* note 371, at 276; 2024 UN Declaration on Future Generations, *supra* note 8, actn. 24.
398. Earth Charter, *supra* note 215, princ. 4(a)–(b).
399. See, e.g., Barry Smit & Olga Pilifosova, *Adaptation to Climate Change in the Context of Sustainable Development and Equity*, 8 *Sustainable Dev.* 879–906 (2003).
400. Brown Weiss, *Planetary Trust*, *supra* note 368, at 526, 535, 555; UNESCO Declaration on Future Generations, *supra* note 88, pmb. ¶ 11; 2024 UN Declaration on Future Generations, *supra* note 8, commit. 19.
401. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 16; World Heritage Convention, *supra* note 89, arts. 1, 2; UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property art. 1, *adopted* Nov. 14, 1970, 823 U.N.T.S. 231 (*entered into force* Apr. 24, 1972) [hereinafter UNESCO Cultural Property Convention]; UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage arts. 2(1), 2, *adopted* Oct. 17, 2003, 2368 U.N.T.S. 1 (*entered into force* Apr. 20, 2006) [hereinafter UNESCO Intangible Cultural Heritage Convention].
402. UNESCO Declaration on Future Generations, *supra* note 88, art. 6 (human genome and biodiversity); International Treaty on Plant Genetic Resources for Food and Agriculture art. 15.1, *adopted* Nov. 3, 2001, 2400 U.N.T.S. 303 (*entered into force* June 29, 2004) [hereinafter ITPGRFA].

environmental resources,⁴⁰³ and retain and further develop responsive social, economic, and political institutions.⁴⁰⁴ Each generation also has a trusteeship duty to conserve the “options” of cultural heritage by protecting and promoting the diverse cultural base, which is inseparable from respect for human dignity and all human rights interrelated and interdependent with cultural heritage.⁴⁰⁵ The Special Rapporteur in the field of cultural rights, Karima Bennoune, has elaborated on the human rights dimensions of cultural heritage as being “significant in the present, both as a message from the past and as a pathway to the future.”⁴⁰⁶ Cultural heritage should be understood as including the resources that support the cultural identity and development of various individuals, groups, and peoples, which they seek to pass on to future generations, whether through implicit or explicit means.⁴⁰⁷ The cultural resource base entails knowledge systems, practices, objects, cultural sites, and linguistic diversity.⁴⁰⁸

(6) The present generation bears a significant duty of trusteeship to ensure that future generations have the requisite conditions to build resilience in order to effectively address their challenges and serve as responsible trustees for their generations that follow.⁴⁰⁹ Each generation is entrusted to preserve, defend, and improve the “quality” of the natural and cultural resource base.⁴¹⁰ Regarding the natural environment, the Inter-American Court of Human Rights has held that the present generation acts as “custodians” who must pass the environment “to future generations in equal or better conditions than those in which we received it from our predecessors.”⁴¹¹ In doing so, trustees must take “appropriate” steps and make use of “careful planning or management” to safeguard the “natural resources of the earth” and the biological and cultural heritage of humankind for the benefit of present and future generations.⁴¹² Conserving the “quality” of natural resources means that States must take all necessary measures to ensure that these resources are not alienated or depleted to the extent that would undermine their long-term viability.⁴¹³ Principle 5 of the Stockholm Declaration stipulates that the Earth’s non-renewable resources must be used in a manner that prevents their exhaustion by a single generation and

403. UNESCO Declaration on Future Generations, *supra* note 88, art. 5(3); *Our Common Agenda: Policy Brief 1*, *supra* note 8, ¶ 13.

404. See Commentary, Princ. 22.

405. Special Rapporteur in the Field of Cultural Rights, *Destruction of Cultural Heritage*, ¶¶ 52–58, U.N. Doc. A/71/317 (2016).

406. *Id.* ¶ 6.

407. *Id.*

408. World Heritage Convention, *supra* note 89, arts. 1, 2; UNESCO Cultural Property Convention, *supra* note 401, art. 1; UNESCO Intangible Cultural Heritage Convention, *supra* note 401, art. 2(1)–(2).

409. *Gabčíkovo-Nagymaros Project* (separate opinion by Weeramantry, J.), 1997 I.C.J. 7, 110 (“There should be no waste, and there should be a maximization of the use of plant and animal species, while preserving their regenerative powers. The purpose of development is the betterment of the condition of the people.”).

410. C.F. art. 225 (Braz.) (“all persons are entitled to an ecologically balanced environment, which is an asset for the people’s common use and is essential to healthy life, it being the duty of the Government and of the community to defend and preserve it for present and future generations”); Earth Charter, *supra* note 215, princ. 5 (Ecological Integrity); Hague Principles on Trusteeship, *supra* note 224, princ. 1.2; UNESCO Intangible Cultural Heritage Convention, *supra* note 401, art. 2(1)–(2).

411. *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 93 (2023) (concurring opinion by Pérez Manrique et al., J.J.).

412. 1972 Stockholm Declaration, *supra* note 94, princ. 2; UNESCO Cultural Property Convention, *supra* note 401, art. 6(3); Agreement Establishing the South Pacific Regional Environment Programme pmb., art. 2(1), adopted June 15, 1993, 1982 U.N.T.S. 3 (entered into force Aug. 31, 1995).

413. Convention on Biological Diversity, *supra* note 96, art. 2; Convention on the Law of the Non-Navigational Uses of International Watercourses art. 21, adopted May 21, 1997, 36 I.L.M. 700 (entered into force Aug. 17, 2014) [hereinafter Watercourses Convention]; UNFCCC, *supra* note 98, art. 2.

protects the resources against the danger of extinction, ensuring that people of all generations can share in their benefits.⁴¹⁴ In fulfilling its trusteeship duties of conserving the “quality” of the natural resource base, States must coordinate, monitor and supervise, for example, the precautionary approach to decision-making to anticipate, prevent, and minimize consequences of the unsustainable use of resources.⁴¹⁵ This approach is illustrated in *Robinson Township v. Commonwealth*, where the Supreme Court of Pennsylvania invoked the public trust doctrine to declare that a law supporting fracking violated the state constitution’s guarantee of a healthy environment for both present and future generations.⁴¹⁶ The Court held that the public trust doctrine requires the trustee to “conserve and maintain” natural resources, which would encompass the duty to “refrain from permitting or encouraging the degradation, diminution, or depletion of public natural resources, whether such degradation, diminution, or depletion would occur through direct state action or indirectly, e.g., because of the state’s failure to restrain the actions of private parties.”⁴¹⁷

(7) Each generation’s trusteeship duties bind them as custodians of natural resources, including forests, minerals, lands, waters, fisheries, wildlife, and offshore areas such as the seabed, ocean floor, and subsoil.⁴¹⁸ The Supreme Court of the Philippines held in *Metropolitan Manila Bay Development Authority v. Concerned Residents* that no one can “escape their obligation to future generations of Filipinos to keep the waters of the Manila Bay clean and clear as humanly as possible. Anything less would be a betrayal of the trust reposed in them.”⁴¹⁹ Similarly, the South African National Environmental Management Act in Section 2 illustrates that natural resources’ quality will be conserved for future generations where the “beneficial use of environmental resources” serves the “public interest” and is “protected as the people’s common heritage.”⁴²⁰ These trusteeship duties to conserve the quality of resources imply a duty of care,⁴²¹ due diligence,⁴²² and the remediation of environmental damage,⁴²³ underscoring the need for trustees to conduct proper impact assessments to evaluate whether any actions will negatively impact the quality of the enjoyment of the natural and cultural resources by future generations.⁴²⁴ In this respect, the High Court of Uganda, in *Advocates Coalition for Development v. Attorney General*, held that the granting of a permit to a sugar company to utilize a forest reserve on which a local community relied for their sustenance without a proper environmental impact assessment was in breach of the public trust doctrine.⁴²⁵ The Court held that the State did not fulfill its stewardship duties to protect the forest by adequately engaging with the local community and conducting an

414. 1972 Stockholm Declaration, *supra* note 94.

415. Earth Charter, *supra* note 215, princ. 6. See Commentary, Princ. 9.

416. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 8–10 (Pa. 2013) (U.S.).

417. *Id.* at 10.

418. 1972 Stockholm Declaration, *supra* note 94, princ. 2 (definition of natural resources); Seabed and Ocean Floor Principles, *supra* note 373, princ. 1.

419. *Metro. Manila Dev. Auth. v. Concerned Residents*, Sup. Ct. Phil., G.R. Nos. 171947-48, 574 S.C.R.A., 31, 661 (Dec. 18, 2008).

420. Nat’l Ev’t Mgmt. Act § 2 (S. Afr.).

421. *E.g.*, *Urgenda v. Neth.* 2015, *supra* note 122, ¶¶ 2.2.2, 4.57.

422. *E.g.*, Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶¶ 69, 80–81, 91.

423. *E.g.*, Nat’l Ev’t Mgmt. Act § 28 (S. Afr.).

424. UNESCO Declaration on Future Generations, *supra* note 88, art. 5(4); Convention on Biological Diversity, *supra* note 96, art. 14.

425. *Advocates Coal. for Dev. & Env’t v. Att’y Gen.*, High Ct. Kampala, Misc. Cause No. 0100 of 2004, at 6–8 (H.C.K.) (Uganda).

impact assessment.⁴²⁶ Relatedly, in the United States, numerous cases found that federal and state governments have violated their public trust obligations by failing to adequately mitigate greenhouse gas emissions contributing to climate change.⁴²⁷

(8) To preserve the “quality” of the cultural resource base, trustees must ensure the conservation, safeguarding, and promotion of the entire cultural sector, including tangible and intangible cultural heritage.⁴²⁸ Trustees must work toward achieving greater geographical balance and representation of cultural heritage across all regions of the globe,⁴²⁹ and promote cultural and creative industries as fundamental dimensions to sustain cultural diversity and pluralism for the benefit of present and future generations.⁴³⁰ This would include strengthening the enforcement of all rights that enable and facilitate access and enjoyment of cultural heritage, particularly the rights to freedom of expression, belief and religion, information, and education.⁴³¹ States must effectively prevent and stop the destruction of cultural heritage nationally and transnationally, and where destruction takes place, they must ensure appropriate remedial and positive measures are taken to restore and revitalize any element to pass it on to future generations.⁴³² This would include ratifying the core cultural heritage conventions and enacting and implementing appropriate legislation that vests trusteeship duties in specially trained personnel with sufficient protection and procedural and financial safeguards to preserve cultural heritage for future generations.⁴³³

(9) For States to fulfill their intergenerational duties and trusteeship, they must further ensure the conservation of “access” to natural and cultural resources. For example, States are the trustees of water resources for the public and must balance the right to water of present and future generations in securing its physical, economic, and information accessibility on a non-discriminatory basis.⁴³⁴ In *Mehta v. Nath*, the Supreme Court of India held that the permission to allow a company to change the course of a river by blasting a riverbed to construct a hotel near the mouth of the river violated the public trust doctrine.⁴³⁵ The Court indicated that the public

426. *Id.* at 10–11.

427. *E.g.*, *Foster v. Washington Dep’t of Ecology*, No. 14-2-25295-1 (Wash. Super. Ct. filed Sept. 2014); *Juliana v. U.S.*, No. 6:15-cv-01517 (D. Or. filed Aug. 2015); *Sanders-Reed v. Martinez*, 2015-NMCA-063, 350 P.3d 1221 (N.M. Ct. App., Mar. 12, 2015).

428. Brown Weiss, *Planetary Trust*, *supra* note 368, at 526; UNESCO Intangible Cultural Heritage Convention, *supra* note 401, arts. 1, 2(1)–(2); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶¶ 16, 70; 2024 UN Declaration on Future Generations, *supra* note 8, commit. 15.

429. UNESCO World Conference on Cultural Policies and Sustainable Development, ¶ 9, MONDIACULT-2022/CPD/6 (2022).

430. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 52(d); Special Rapporteur in the Field of Cultural Rights, *Destruction of Cultural Heritage*, ¶ 78(p), U.N. Doc. A/71/317 (2016).

431. *Report of the Independent Expert in the Field of Cultural Rights, Access to Cultural Heritage as a Human Right*, Farida Shaheed, U.N. H.R.C., 17th Sess., Agenda Item 3, ¶ 78, U.N. Doc. A/HRC/17/38 (2011); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶¶ 15(b), 16(b), 43, 49(b), 55(c).

432. Special Rapporteur in the Field of Cultural Rights, *Destruction of Cultural Heritage*, ¶¶ 77, 79(e), U.N. Doc. A/71/317 (2016); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 50(a). See Commentary, Princs. 30(f), 33, 34, 35, 36.

433. Independent Expert in the Field of Cultural Rights, *Access to Cultural Heritage as a Human Right*, ¶¶ 78(b), (l), (m), 79, U.N. Doc. A/HRC/17/38 (2011); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 48.

434. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶¶ 7, 11, 28, 37 (obligation includes the respecting, protecting, promoting, and fulfilling access to water, including in customary and community-based water management systems, on a non-discriminatory basis). See Commentary, Princ. 6(e).

435. *Mehta v. Nath*, (1997) 1 S.C.C. 388, at 16–22 (India).

trust doctrine places the State as the trustee of public resources that must be protected not only for the present generation but also for future generations and therefore may not be sold for private ownership or commercial purposes.⁴³⁶ By enforcing the polluter-pays principle and ordering the company to compensate for the damage and restore access to the riverbed and the environment, the Court's decision underscored the need to safeguard natural resources for the long-term benefit of all generations, ensuring that future generations retain access to these vital ecosystems.⁴³⁷

(10) The trusteeship duty of conserving "access" to the cultural and natural resource base will have to adequately integrate intra- and intergenerational human rights obligations as well as non-discrimination duties to ensure the equitable distribution of resources over time.⁴³⁸ To ensure "access" to the cultural resource base for future generations, trustees have to eliminate the barriers that marginalized groups of present generations encounter in transmitting their cultural heritage to future generations.⁴³⁹ To address the barriers, States must take legislative, administrative, educational, and technical measures by,⁴⁴⁰ amongst others, employing digital technologies and new media,⁴⁴¹ allocating sufficient budgetary resources for national and international cultural preservation,⁴⁴² and implementing culturally sensitive educational programs.⁴⁴³ For example, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa places obligations on States Parties to take steps to assist older persons in fulfilling their duties to "mentor and pass on knowledge and experience to the younger generation"⁴⁴⁴ and to "foster and facilitate inter-generational dialogue and solidarity within their families and communities."⁴⁴⁵ Guiding principle 4 of the 2024 UN Declaration on Future Generations stipulated that the promotion of "intergenerational dialogue, and social cohesion is an indispensable part of the foundation for the prosperity of future generations and, in this regard, the role of families and family-friendly and family-oriented policies as contributors to sustainable development must be recognized."⁴⁴⁶

(11) Principle 8 (c) indicates that intergenerational duties of trusteeship extend to the near-Earth environment and the Moon.⁴⁴⁷ This aligns with Article 4 (1) of the UN General Assembly

436. *Id.* at 17.

437. *Id.* at 22–23. See also *B.C. v. Canadian Forest Products Ltd.*, [2004] 2 S.C.R. 74, ¶¶ 64, 76 (Can.).

438. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 52(g); Crellis F. Rammelt et al., *Impacts of Meeting Minimum Access on Critical Earth Systems Amidst the Great Inequality*, 6 *Nature Sustainability* 212, 212–21 (2023). See Commentary, *Princs.* 6, 7.

439. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 15(b); 2024 UN Declaration on Future Generations, *supra* note 8, commit. 19.

440. *Id.* ¶ 48.

441. Special Rapporteur in the Field of Cultural Rights, *Destruction of Cultural Heritage*, ¶ 78(c)(i), U.N. Doc. A/71/317 (2016).

442. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 48; Special Rapporteur in the Field of Cultural Rights, *Destruction of Cultural Heritage*, ¶ 78(c)(ii), U.N. Doc. A/71/317 (2016).

443. Special Rapporteur in the Field of Cultural Rights, *Destruction of Cultural Heritage*, ¶ 78(c)(iv), U.N. Doc. A/71/317 (2016).

444. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa art. 20(1), *adopted* Jan. 31, 2016.

445. *Id.* art. 20(2).

446. 2024 UN Declaration on Future Generations, *supra* note 8, guid. princ. 4.

447. See 2024 Pact for the Future, *supra* note 16, actn. 27, ¶ 48(a). This trusteeship duty may also extend to outer space and, when necessary, activate international cooperation for adhering to the exploration and use of outer space for "peaceful purposes and for the benefit of all humanity" only and eliminating continued commercial and military activities in outer space increasing existential risk. See *id.* actn. 56, ¶ 64; Treaty on Principles

Resolution 34/68 establishing the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, which stipulates:

The exploration and use of the moon shall be the province of all [hu]mankind and shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development. Due regard shall be paid to the interests of present and future generations as well as to the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations.⁴⁴⁸

9. *Prevention and Precaution*

- a) *Where there are reasonable grounds for concern that the impacts of State or non-State conduct, whether singly or in aggregate, may result in violations of the human rights of future generations, States have an obligation to prevent the harm, and must take all reasonable steps to avoid or minimize such harm.*
- b) *Doing so demands a strong approach to precaution, particularly when conduct threatens irreparable harm to the Earth's ability to sustain human life or to the common biological and cultural heritage of humankind.*
- c) *The burden of proof in all circumstances must lie with those who would undertake or persist in the conduct involved, not with those who might be harmed as a result. This burden grows proportionately greater as the scale, scope, and irremediability of threats to rights of future generations increases.*

Commentary

(1) The Principle on Prevention and Precaution reaffirms the two well-established principles of preventive action and precautionary measures embedded in international human rights and environmental law.⁴⁴⁹ Prevention and precaution, while separate and distinct, are closely linked, and together impose on States a general obligation to act with prudence and caution⁴⁵⁰ when

Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, *opened for signature* Jan. 27, 1967 G.A. Res. 222 (XXI), 610 U.N.T.S. 205 (*entered into force* Oct. 10, 1967) [hereinafter *Outer Space Treaty*]; Convention on International Liability for Damage Caused by Space Object, *opened for signature* Mar. 29, 1972, G.A. Res 2777 (XXVI), 961 U.N.T.S 187 (*entered into force* Sept. 1, 1972); U.N. Comm. on the Peaceful Uses of Outer Space, Guidelines for the Long-term Sustainability of Outer Space Activities, Guid. A, B, U.N. Doc. A/AC.105/2018/CRP.20 (2018). See also Charles Hamilton, *Space and Existential Risk: The Need for Global Coordination and Caution in Space Development*, 21 *Duke L. & Tech. Rev.* 1–60 (2021); Anél Ferreira-Snyman & Gerrit Ferreira, *The Application of International Human Rights Instruments in Outer Space Settlements: Today's Science Fiction, Tomorrow's Reality*, 22 *Potchefstroom Electronic L. J.* 1–43 (2019).

448. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, *opened for signature* Dec. 18, 1979, G.A. Res. 34/68, 1363, annex, U.N.T.S. 3 (*entered into force* July 11, 1984) [hereinafter *Moon Agreement*].

449. See, e.g., *Whaling in the Antarctic* (separate opinion by Cançado Trindade, J.), 2014 I.C.J. at 348, ¶¶ 60, 71.

450. See, e.g., *Land Reclamation by Singapore in and around the Straits of Johor* (Malay. v. Sing.), Case No. 12, Order on Provisional Measures, ¶ 99 (Int'l Trib. for the Law of the Sea, Oct. 8, 2003); *MOX Plant Case* (Ir. v. U.K.), Case No. 10, Order on Provisional Measures, ¶ 84 (Int'l Trib. for the Law of the Sea, Dec. 3, 2001); *Southern Bluefin Tuna Cases* (N.Z. v. Japan; Austl. v. Japan), Case Nos. 3 & 4, Orders on Provisional Measures, ¶ 77 (Int'l Trib. for the Law of the Sea, Aug. 27, 1999).

there are reasonable grounds for concern⁴⁵¹ that adverse effects on the environment,⁴⁵² human rights,⁴⁵³ or both,⁴⁵⁴ will result from a certain activity.

(2) The two principles, albeit closely connected, have a different scope and content. On the one hand, the principle of preventive action is internationally recognized as a customary rule,⁴⁵⁵ and is grounded in States' obligation of due diligence.⁴⁵⁶ It requires States to act by adopting all the appropriate measures to prevent, reduce, limit, and control damages to the environment and violations of human rights that could result from a situation of known risk.⁴⁵⁷ Furthermore, the principle of prevention entails taking measures to identify activities which involve risks, and "this obligation is of a continuing character."⁴⁵⁸ For instance, in the context of the intergenerational transmission of poverty and disadvantage,⁴⁵⁹ the 2024 Pact for the Future commits States to "[t]ake concrete actions to prevent people from falling back into poverty, including by establishing well-designed, sustainable and efficient social protection systems for all that are responsive to shocks."⁴⁶⁰

(3) On the other hand, the precautionary principle plays a role at an earlier stage. If, after a preliminary evaluation of a phenomenon or an activity, scientific uncertainty⁴⁶¹ remains regarding the possible harmful consequences of said phenomenon or activity, States must act to avoid or limit the occurrence of these harmful consequences.⁴⁶² Given the epistemic limitations inherent in assessing risks to future generations, States must consider and act in accordance with

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451. *E.g.*, Convention for the Protection of the Marine Environment of the North-East Atlantic art. 2, *opened for signature* Sept. 22, 1992, 2354 U.N.T.S. 67 (*entered into force* Mar. 25, 1998) [hereinafter OSPAR Convention].
452. Rio Declaration on Environment and Development, *supra* note 97, princ. 15; Convention on Biological Diversity, *supra* note 96, arts. 8, 14; Convention on the Ban of Import Into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa art. 4(f), *opened for signature* Jan. 30, 1991, 2101 U.N.T.S. 177 (*entered into force* Apr. 22, 1998) [hereinafter Bamako Convention]; 1972 Stockholm Declaration, *supra* note 94, princ. 24.
453. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 56–57; *Tatar v. Rom.*, App. No. 67021/01, Eur. Ct. H.R., ¶ 120 (Jan. 29, 2009); *U.K. v. Comm'n of the European Cmty*, Case C-180/96, ¶ 100, 1998 E.C.R. I-2265 (May 5, 1998); *The Queen v. Ministry of Agriculture, ex parte National Farmers' Union*, Case C-157/96, ¶ 64, 1998 E.C.R. I-2211 (May 5, 1998); *Balmer-Schafroth v. Switz.*, App. No. 67/1996/686/876, 17 Eur. Ct. H.R. (Aug. 26, 1997) (Separate opinion by Pettiti, J.); *Vellore Citizens Welfare Forum v. India*, (1996) 5 S.C.C. 647, ¶¶ 11–13 (Aug. 28, 1996) (India).
454. *E.g.*, *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 127–28, 207 (2023).
455. *Pulp Mills (Arg. v. Uru.)*, 2010 I.C.J. 14, ¶ 135, ¶ 59 (separate opinion by Cançado Trindade, J.).
456. *Id.* See also *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, Case No. 17, ¶ 131, Int'l Trib. for the Law of the Sea (Feb. 1, 2011); *Commentary to Article 3 of the International Law Commission's Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities*, *Report of the International Law Commission on the work of its 53rd Sess.*, U.N. GAOR, Int. Law Comm'n, 53d Sess., 154, art. 3(7) [hereinafter Int'l L. Comm'n Articles on Transboundary Harm].
457. PHILIPPE SANDS & JACQUELINE PEEL, *INTERNATIONAL ENVIRONMENTAL LAW* 200–03 (3d ed., 2012).
458. Int'l L. Comm'n Articles on Transboundary Harm, *supra* note 456, art. 3, ¶ 5.
459. See *Commentary*, Princ. 6(d).
460. 2024 Pact for the Future, *supra* note 16, actn. 2, ¶ 21(b).
461. Despite older formulations of the precautionary principle setting the threshold of application of the precautionary principle to a "lack of scientific certainty," today the threshold is set at a lower level, and the principle applies in the simple presence of reasonable evidence of risk. See, e.g., *Urgenda v. Neth.* 2015, *supra* note 122, ¶ 4.76 (Court stated that "the State cannot postpone taking precautionary measures based on the sole reason that there is no scientific certainty yet about the precise effect of the measures. . . . Finally, the State will have to base its actions on the principle of 'prevention is better than cure'").
462. *Treaty on the Functioning of the European Union* art. 191(2), Oct. 26, 2012, 2012 O.J. (C 326) 47; *Bamako Convention*, *supra* note 452, art. 4(f); *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 34 (2023).

the best available science regarding the magnitude of the risks in question.⁴⁶³ States acting with due diligence must adequately respond to the urgency, severity, irreversibility, and/or likelihood of such risks. For instance, because of the inextricable link between the environment and human rights, especially in the context of future generations, where there are risks of “severe or irreversible damage” to the environment,⁴⁶⁴ States must act under the precautionary principle in order to protect human rights.⁴⁶⁵ In other words, States must take effective measures “where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty.”⁴⁶⁶ In *Habitantes de La Oroya v. Peru*, the Inter-American Court of Human Rights recognized the significance of the precautionary principle in safeguarding the rights of future generations and ensuring intergenerational equity.⁴⁶⁷ The Court highlighted the intrinsic connection between the right to a healthy environment and the right to health for this purpose, stating:

States must act in accordance with the precautionary principle in order to prevent the violation of individuals’ rights in cases where there are plausible indicators that an activity could cause serious and irreversible damage to the environment, even in the absence of scientific certainty. Therefore, even in the absence of individualized scientific certainty, but where there are elements that suggest a significant risk to people’s health due to exposure to high levels of environmental pollution, States must adopt effective measures to prevent such exposure. For this reason, the Court considers that the lack of scientific certainty regarding the particular effects that environmental pollution may have on people’s health cannot be a reason for States to delay or avoid the adoption of preventive measures, nor can it be invoked as a justification for failing to adopt general protective measures for the population.⁴⁶⁸

(4) Principle 9 (c) states that the burden of proof, in all circumstances, must lie with those who would undertake or persist in the conduct involved, not with those who might be harmed as a result. This aligns with the established understanding that the precautionary principle entails a shift in the burden of proof; specifically, in the presence of scientific uncertainty linked to a certain activity, the proponent of the activity bears the burden of proving that it is safe to carry out the activity in question.⁴⁶⁹

463. *E.g.*, Paris Agreement, *supra* note 99, art. 4 (indicates that States must aim to “to undertake rapid reductions thereafter in accordance with best available science”).

464. Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., n. 426 (noting that the precautionary principle applies where there is a risk of “severe or irreversible damage” and, thus, “it requires a higher level of damage than the standard applicable to the obligation of prevention, which requires a risk of significant damage”).

465. Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 62 (for the relevance of the precautionary principle to the interpretation of international human rights law). *See also* Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., ¶ 180.

466. Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., ¶ 180. *See also* Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 56–57.

467. *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 128 (2023).

468. *Id.* ¶ 207.

469. Wingspread Statement on the Precautionary Principle, ¶ 6 (Jan. 15, 1998) (stated that, in the event of scientific uncertainty “the proponent of an activity, rather than the public, should bear the burden of proof” that the activity does not represent a risk for the environment). *See* OSPAR Convention, *supra* note 451, art. 3.3(c); Comm’n of the European Cmtys, Communication from the Commission on the Precautionary Principle, EU COMM. (2000) 1 final, 20 (Feb. 2, 2000) [hereinafter EU Comm. Precautionary Principle]. *See also* Council of Eur. Directive 85/374, art. 7, 1985 O.J. (L 210) 29 (EC) (shifting the burden of proof to protect human health in the context of defective products regulations); Earth Charter, *supra* note 215, princ. 6(b) (“Place the burden of proof on those who argue that a proposed activity will not cause significant harm, and make the responsible parties liable for environmental harm”).

(4) Both the principle of preventive action,⁴⁷⁰ and the precautionary principle are widely recognized and established within international human rights law. The recognition of the right to a clean, healthy and sustainable environment⁴⁷¹ further consolidates these principles as part of international human rights law.⁴⁷² However, as the broad formulation of Principle 9 makes clear, the principle's applicability is not confined to environmental contexts and applies more broadly to the rights of future generations.⁴⁷³

(5) Some of the first formulations of the precautionary principle allowed States to conduct a cost-effectiveness analysis to decide whether to act in a preventive and precautionary manner.⁴⁷⁴ However, it has been reaffirmed multiple times that if an existing risk or potential risk represents a threat to human rights, then no economic cost-effective analysis can override the need for preventive and precautionary action.⁴⁷⁵ This, with even greater reason, must hold true when it comes to the protection, respect, and fulfillment of human rights of future generations, who must not bear the burden of living in an irreversibly damaged environment,⁴⁷⁶ or suffer the irrevocable loss of the common heritage of humankind.

10. *International Solidarity*

a) *All human beings, whether within present or future generations, are entitled to a social and international order in which rights and freedoms can be realized for all. Such an*

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470. *E.g.*, CRC, *supra* note 12, art. 19 (2); Comm. on Elim. Discrim. Against Women, *General Recommendation No. 35*, *supra* note 206, ¶¶ 26, 30; G.A. Res. 48/141, *High Commissioner for the Promotion and Protection of All Human Rights*, U.N. GAOR, 48th Sess., Agenda Item 114(b), ¶ 4(f), U.N. Doc. A/RES/48/141 (Dec. 20, 1993) (including among the duties of the High Comm'r to "play an active role in . . . preventing the continuation of human rights violations throughout the world, as reflected in the Vienna Declaration and Programme of Action"); Vienna Declaration, *supra* note 242, pmb., ¶ 14. *See also* Xákmok Kásek Indigenous Community v. Para, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 187 (2010); Velásquez-Rodríguez v. Hond., Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 166, 174–75 (July 29, 1988). *See generally* Sigrun I. Skogly, *Prevention is Better than a Cure: The Obligation to Prevent Human Rights Violations*, 46 Hum. Rts. Q. 330–70 (2024).
471. H.R.C. Res. 48/13, *Human Right to a Clean, Healthy and Sustainable Environment*, pmb., ¶¶ 6, 8 (2021); G.A. Res. 76/300, *Human Right to a Clean, Healthy and Sustainable Environment*, ¶¶ 7, 8 (2022).
472. ARIE TROUWBORST, PRECAUTIONARY RIGHTS AND DUTIES OF STATES, 16 (2006) (stating that "health protection may probably be considered as encompassed within the scope of the precautionary principle under customary international law"). *See also* Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services*, Key Message A1, SPM. 10 (May 6, 2019) (on the inextricable link between the protection of the environment and the right to health).
473. TROUWBORST, PRECAUTIONARY RIGHTS AND DUTIES, *supra* note 472, at 34 (defining the precautionary principle as the "necessary condition for the attainment of sustainable development," defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"). *See also id.* at 139 (concluding that the harm to be avoided by the precautionary approach must "be considered serious whenever there are grounds for concern that an activity may appreciably prejudice the interests of future generations").
474. Rio Declaration on Environment and Development, *supra* note 97, princ. 15; UNFCCC, *supra* note 98, art. 3(3).
475. EU Comm. Precautionary Principle, *supra* note 469, at 18–19; OSPAR Convention, *supra* note 451, arts. 3(3)(c), 4(3) (in particular, the latter states that "Any authorisation or regulation under paragraph 1 of this Article shall not permit the dumping of vessels or aircraft containing substances which result or are likely to result in hazards to human health"). *See also* Convention on Biological Diversity, *supra* note 96, pmb., ¶¶ 8, 9 (indicating that a cost-effective analysis is not required in the application of the precautionary principle).
476. *E.g.*, *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 128 (2023). At the national level, this has also been clearly expressed in *Neubauer v. Germ.*, *supra* note 22, ¶ 193; *Urgenda v. Neth.* 2015, *supra* note 122, ¶ 4.76.

international order is not possible, now or in the future, without people, groups and States adopting the principle of international solidarity.

- b) *States have an individual and collective duty to recognize, respect and practice international solidarity in their relations with each other to ensure the rights of present and future generations, including the right to live in a clean, healthy and sustainable environment, and the rights of Nature.*

Commentary

(1) Intergenerational equity and concern for future generations are integral to the principle of international solidarity.⁴⁷⁷ As highlighted by Cecilia Baillet, the principle of international solidarity is the “expression of consciousness about the interconnectedness of peoples and generations in the act of recognition of the rights of others and shared agency and responsibility to cooperate with each other to address common challenges and protect global public goods.”⁴⁷⁸ Principle 10 aligns with the growing international impetus to recognize, respect, and practice international solidarity as a key mechanism for the realization of the human rights of present and future generations.⁴⁷⁹ As the UN Secretary-General’s report on Our Common Agenda asserts, “[h]umanity’s welfare – and indeed, humanity’s very future – depend on solidarity and working together as a global family to achieve common goals.”⁴⁸⁰ Further, the 2024 UN Declaration on Future Generations emphasizes that an “inclusive, transparent and effective multilateral system is essential to enhance international solidarity and cooperation, rebuild trust and create a world that is safe, just and sustainable, where human dignity is ensured.”⁴⁸¹ Principle 10 also closely aligns with the extraterritorial human rights obligations stipulated in Principle 25, recognizing that the negative and positive impacts of a global community of duty bearers transcend national borders in an increasingly interdependent world.⁴⁸²

(2) International solidarity not only underpins the internationalization of concern for human rights but also shapes obligations of cooperation and assistance, contributing to the shared global responsibility to protect the human rights of present and future generations and ensuring effective remedies when rights are violated.⁴⁸³ The individual and collective duties to recognize, respect, and practice international solidarity emanate from the implicit reference in the UN Charter, the

477. Irene Gómez-Franco, *Amplified Solidarity with Future Generations*, 9 *Philosophia* 1–14 (2024); Anca C. Prodan, *Solidarity Rights and the Common Heritage of Humanity*, in *THE ROUTLEDGE HISTORY OF HUMAN RIGHTS* 542–58 (Jean Quataert & Lora Wildenthal eds. 1st ed., 2019); Dinah Shelton, *Intergenerational Equity*, in *SOLIDARITY: A STRUCTURAL PRINCIPLE OF INTERNATIONAL LAW* 123, 125 (Rüdiger Wolfrum & Chie Kojima eds., 2010).

478. Cecilia M. Baillet, *Introduction: Researching International Law and International Solidarity*, in *RESEARCH HANDBOOK ON INTERNATIONAL SOLIDARITY AND THE LAW* 1, 4 (Cecilia M. Baillet ed., 2024).

479. Leonardo Pasquali, *Solidarity: Traditional International Law vs. Modern International Law and Universal International Law vs. Law of Regional Organizations*, in *SOLIDARITY IN INTERNATIONAL LAW: CHALLENGES, OPPORTUNITIES AND THE ROLE OF REGIONAL ORGANIZATIONS* 1, 2–3 (Leonardo Pasquali ed., 2023).

480. U.N. Secretary-General, *Our Common Agenda*, U.N. GAOR, 75th Sess., Agenda Item 128(a), Summ., ¶ 8, U.N. Doc. A/75/982 (2021).

481. 2024 UN Declaration on Future Generations, *supra* note 8, guid. princ. 10.

482. See Commentary, Princ. 25.

483. *E.g.*, Report of the Special Rapporteur on Extreme Poverty and Human Rights, *The Parlous State of Poverty Eradication*, Philip Alston, U.N. H.R.C., 44th Sess., Agenda Item 3, ¶¶ 35, 49, 68, U.N. Doc. A/HRC/44/20 (2020); Miriam Schettini, *International Solidarity and Human Rights: Some Remarks About the Draft United Nations Declaration on the Right to International Solidarity*, in *SOLIDARITY IN INTERNATIONAL LAW: CHALLENGES, OPPORTUNITIES AND THE ROLE OF REGIONAL ORGANIZATIONS* 145–63 (Leonardo Pasquali ed., 2023).

UDHR, and international human rights treaties, which recognize international solidarity in their preambles and through provisions on international cooperation and assistance.⁴⁸⁴ Recent articulations of international solidarity suggest that it gives rise to, at the very least, concrete human rights obligations or a standalone human right.⁴⁸⁵ The former stems from established international law principles such as sovereign equality, reciprocity, self-determination, cooperation and assistance, and the universality of human rights,⁴⁸⁶ whereas the latter integrates these principles into a more robust human rights framework that aims to reform international relations within the context of globalization and the widening gulf between developed and developing countries.⁴⁸⁷ Rüdiger Wolfrum argues that the increasing recognition of international solidarity reflects a shift in the international legal system from a network of bilateral commitments delineating areas of jurisdiction and coordinating State activities to a value-based legal order based on promoting international justice and equality among States.⁴⁸⁸

(3) International solidarity imposes both negative and positive human rights obligations in vertical (states-citizens) and horizontal (interstate) relationships.⁴⁸⁹ Negative obligations require States to refrain from actions that exacerbate or contribute to harmful events, while positive obligations involve the creation and redistribution of resources aimed at ensuring international equity.⁴⁹⁰ The principle of international solidarity manifests in three human rights dimensions: pursuing common human rights objectives, achieving these objectives through common but differentiated responsibilities, and adopting actions and measures.⁴⁹¹ Principle 10 affirms that these forms of international solidarity must be implemented to realize the rights of present and future generations. As Shelton underscores, intergenerational equity rooted in international solidarity acknowledges the interconnectedness of our dynamic planetary system, where

484. U.N. Charter, *supra* note 28, pmb. arts. 1(3), 55, 56; UDHR, *supra* note 29, pmb. ¶¶ 1, 2, 6, 7, arts. 1, 22, 28; ICCPR, *supra* note 14, pmb. ¶ 1, 3, 4, art. 1(2); ICESCR, *supra* note 14, pmb. ¶¶ 2, 4, 5, arts. 1(2), 11; CEDAW, *supra* note 33, pmb. ¶¶ 1, 7–9; CRC, *supra* note 12, pmb. ¶¶ 1, 2, 4, 7, 11, arts. 4, 17, 23(4), 24(4), 28(3), 45; CERD, *supra* note 33, pmb. ¶¶ 1, 9; CRPD, *supra* note 33, pmb. ¶¶ (a), (c), (l), arts. 4(2), 32.

485. *Report of the Independent Expert on Human Rights and International Solidarity, Revised Draft Declaration on Human Rights and International Solidarity, Obiora C. Okafor*, U.N. H.R.C., 53d Sess., Agenda Item 3, ¶¶ 7–13, U.N. Doc. A/HRC/53/32 (2023) [hereinafter *Draft Declaration on Human Rights and International Solidarity*].

486. Rüdiger Wolfrum, *Solidarity*, in *THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW* 401–19 (Dinah Shelton ed., 2013).

487. *Working Paper on Human Rights and International Solidarity, Rui B. Dos Santos Alves*, Sub-Comm’n on the Promotion & Prot. of Hum. Rts., U.N. ESCOR, ¶¶ 8–18, U.N. Doc. E/CN.4/Sub.2/DEC/2003/115 (Oct. 20, 2003); U.N. Conf. on Trade and Development, *World Investment Report 2023, Investing in Sustainable Energy for All*, xiv–xx, U.N. Doc. UNCTAD/WIR/2023 (July 5, 2023) (indicating that a green future will remain out of reach if cooperative efforts do not assist in closing the gap in investment toward an energy transition).

488. Wolfrum, *Solidarity*, *supra* note 486, at 401–02.

489. Laurence Boisson de Chazournes, *Responsibility to Protect: Reflecting Solidarity?*, in *SOLIDARITY: A STRUCTURAL PRINCIPLE OF INTERNATIONAL LAW* 93–109 (Rüdiger Wolfrum & Chie Kojima eds., 2010). See also Kolda Casla & Marion Sander, *Solidarity as Foundation for Economic, Social and Cultural Rights*, 24 *Hum. Rts. L. R.* 1–21 (2024) (making the argument that solidarity is also a duty between persons).

490. Markus Kotzur, *Solidarity as a Legal Concept*, in *SOLIDARITY IN THE EUROPEAN UNION: A FUNDAMENTAL VALUE IN CRISIS* 34, 40 (Andreas Grimm & Susanne M. Giang eds., 2017).

491. Wolfrum, *Solidarity*, *supra* note 486, at 404. *Draft Declaration on Human Rights and International Solidarity*, *supra* note 485, art. 2 (concretizes these three forms of international solidarity in preventive solidarity, reactive solidarity, and international cooperation to solve global challenges). See *Commentary, Princ.* 24.

comprehensive cooperative efforts are essential to mitigate the enduring impacts of present and future threats.⁴⁹²

(4) Principle 10 (b) stipulates that States have an individual and collective duty to recognize, respect, and practice international solidarity in their relations with each other to ensure the rights of present and future generations, including the right to live in a clean, healthy and sustainable environment, and the rights of Nature. Several international standards related to biodiversity protection,⁴⁹³ the right to development,⁴⁹⁴ the right to adequate housing,⁴⁹⁵ the right to health,⁴⁹⁶ and the right to a clean, healthy and sustainable environment,⁴⁹⁷ explicitly mention the importance of international solidarity and international cooperation. For instance, the preamble to the Earth Charter emphasizes “universal responsibility” for ensuring a harmonious relationship respecting human rights and the rights of Nature by stating:

we must decide to live with a sense of universal responsibility, identifying ourselves with the whole Earth community as well as our local communities. We are at once citizens of different nations and of one world in which the local and global are linked. Everyone shares responsibility for the present and future well-being of the human family and the larger living world. The spirit of human solidarity and kinship with all life is strengthened when we live with reverence for the mystery of being, gratitude for the gift of life, and humility regarding the human place in nature.⁴⁹⁸

(5) The shared responsibility for the present and future well-being of the human family and the larger living world is well-illustrated in the Draft Declaration on Human Rights and International Solidarity.⁴⁹⁹ According to Article 9 (1), “States act in compliance with their duty through efforts to realize international solidarity as a human right that is indivisible from, interrelated to and interdependent on all other human rights, and is normatively anchored in a system of rights and corresponding obligations established by international law.” The Declaration further provides that acting in compliance with international solidarity requires the creation of a “global enabling environment for sustainable development that is centred on individuals and peoples and is grounded in intergenerational justice and equity,” which “includes the increased use of

492. Shelton, *Intergenerational Equity*, *supra* note 477, at 125. See also, generally ERI KASAGI ED., SOLIDARITY ACROSS GENERATIONS: COMPARATIVE LAW PERSPECTIVES (2020).

493. E.g., Convention to Combat Desertification, *supra* note 96, arts. 3(1)(b), 4(1)(b); Convention on Biological Diversity, *supra* note 96, pmb. ¶ 15, arts. 5, 14(1)(e), 18(1)–(2), (4); Convention on the Law of the Sea pmb. ¶ 1, § 2, arts. 197–200, 242–44, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 3 (*entered into force* Nov. 16, 1994) [hereinafter Convention on the Law of the Sea]; Watercourses Convention, *supra* note 413, art. 23; International Plant Protection Convention art. VIII, *adopted* Dec. 6, 1951, as amended, 294 U.N.T.S. 43 (*entered into force* Oct. 2, 2005).

494. Declaration on the Right to Development, *supra* note 251, pmb. ¶¶ 1, 3, 5, 15, arts. 3, 4; Draft Convention on the Right to Development, *supra* note 251, arts. 3(i), 13(2).

495. E.g., *Report of the Special Rapporteur on the Right to Adequate Housing*, Miloon Kothari, U.N. ECOSOC, Comm’n on Hum. Rts., 58th Sess., Agenda Item 10, ¶¶ 32–36, U.N. Doc. E/CN.4/2002/59 (2002).

496. E.g., Benjamin M. Meier et al., *Global Obligations to Ensure the Right to Health: Strengthening Global Health Governance to Realise Human Rights in Global Health*, 3 Y.B. Int’l Disaster L. Online 3–34 (2022).

497. E.g., 1972 Stockholm Declaration, *supra* note 94, princ. 24; Rio Declaration on Environment and Development, *supra* note 97, pmb. ¶ 2, princs. 5, 7, 9, 12, 13, 27; Framework Convention for the Protection of the Environment of the Caspian Sea art. 6, *adopted* Nov. 4, 2003, 44 I.L.M. 1 (*entered into force* Aug. 12, 2006); UNFCCC, *supra* note 98, pmb. ¶¶ 6, 9, arts. 3(3), (5), 4; H.R.C. Res. 48/13, *Human Right to a Clean, Healthy and Sustainable Environment*, pmb. ¶ 7, art. 4(a) (2021); G.A. Res. 76/300, *Human Right to a Clean, Healthy and Sustainable Environment*, pmb. ¶ 9, art. 4 (2022); *Report of the Special Rapporteur on the Human Right to a Healthy Environment, Framework Principles on Human Rights and the Environment*, John H. Knox, U.N. GAOR, 73d Sess., Agenda Item 74 (b), ¶¶ 18–19, U.N. Doc. A/73/188 (2018).

498. Earth Charter, *supra* note 215, pmb. ¶¶ 2, 5.

499. Draft Declaration on Human Rights and International Solidarity, *supra* note 485.

sustainable agriculture and fishing, as well as the transition to renewable energy.”⁵⁰⁰ In implementing international solidarity, Article 7 (3) of the Declaration commits States to taking appropriate steps, both individually and collectively, including through international organizations, to conduct assessments on the actual and potential risks and impacts on human rights, and to regulate non-State actors, “to ensure full compliance with their human rights obligations, including those towards future generations.”

(6) International solidarity expressed as international cooperation and assistance is a cornerstone for achieving international equity and safeguarding the rights of disadvantaged populations, as underscored in several key international human rights instruments and recommendations. General Comment 25 of the Committee on Economic, Social and Cultural Rights elaborated on the critical aspects of the duty of international cooperation in science and technology that require global collaboration.⁵⁰¹ In this regard, States have a responsibility to encourage and support their scientific researchers in actively engaging with the international scientific and technological community.⁵⁰² The Committee further underscored the necessity of international cooperation due to the significant disparities among countries in terms of their scientific and technological capabilities.⁵⁰³ To address these inequalities, the Committee emphasized that collaboration across borders is essential, enabling less developed nations to benefit from scientific advancements and technological innovations.⁵⁰⁴ By fostering global development and reducing inequalities, the Committee underscored that the advantages of scientific progress must be equitably shared among all countries, guided by appropriate incentives and regulations to ensure that the benefits are distributed fairly.⁵⁰⁵ International cooperation is further important in the context of the most pressing global risks related to science and technology, where the Committee highlighted:

international cooperation is essential because the most acute risks to the world related to science and technology, such as climate change, the rapid loss of biodiversity, the development of dangerous technologies, such as autonomous weapons based on artificial intelligence, or the threat of weapons of mass destruction, especially nuclear weapons, are transnational and cannot be adequately addressed without robust international cooperation.⁵⁰⁶

International cooperation is particularly vital in the context of pressing global challenges, such as pandemics and artificial intelligence (AI) developments, where coordinated efforts are necessary to prevent, mitigate, and address current and future risks.⁵⁰⁷

(7) The preamble to the CRC emphasizes the importance of international cooperation, recalling that children should be brought up in a “spirit of . . . solidarity” and recognizes that improving the living conditions, health, and education of children, as well as protecting their rights, requires

500. *Id.* art. 9(1)(c).

501. *General Comment No. 25, supra* note 39, ¶ 77.

502. *Id.* ¶ 78.

503. *Id.* ¶ 79.

504. *Id.*

505. *Id.* ¶ 80.

506. *Id.* ¶ 81.

507. *Id.* ¶ 81. See also *Report of the Independent Expert on Human Rights and International Solidarity, Global Vaccine Solidarity and Human Rights in The Context of the Coronavirus Disease (COVID-19) Pandemic*, Obiora C. Okafor, U.N. GAOR, 77th Sess., Agenda Item 69(b), U.N. Doc. A/77/173 (2022); *Report of the Independent Expert on Human Rights and International Solidarity, Artificial Intelligence and International Solidarity*, Cecilia M Bailliet, U.N. GAOR, 79th Sess., Agenda Item 61(b), U.N. Doc. A/79/70 (2024).

a collective global cooperative effort.⁵⁰⁸ The Committee on the Rights of the Child, in General Comment 15 on the right of the child to the enjoyment of the highest attainable standard of health, extended solidarity duties to also apply to national and transnational non-State actors, and expressed:

Private health insurance companies should ensure that they do not discriminate against pregnant women, children or mothers on any prohibited grounds and that they promote equality through partnerships with State health insurance schemes based on the principle of solidarity and ensuring that inability to pay does not restrict access to services.⁵⁰⁹

(8) General Recommendation 32 of the Committee on the Elimination of Discrimination Against Women, which addresses the gender-related dimensions of refugee status, asylum, nationality, and statelessness of women, emphasized that refugee protection is a “collective responsibility” and called upon “non-receiving states to express their solidarity through burden sharing by assisting receiving countries in meeting their international obligations.”⁵¹⁰ Further, the Committee called on States Parties to ensure international cooperation to advance the rights of rural women,⁵¹¹ accelerate the elimination of gender-based violence against women,⁵¹² and equitably manage climate change and disasters that disproportionately affect women and girls.⁵¹³

(9) Under regional law, several instruments contain commitments of regional and international solidarity. For instance, Article 1 (3) of the Arab Charter on Human Rights recognizes the responsibility to “prepare the new generations in Arab States for a free and responsible life in a civil society that is characterized by solidarity.”⁵¹⁴ Article 3 (3) of the Treaty on the European Union stipulates that “[i]t shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.”⁵¹⁵ In the African human rights system, solidarity is both a fundamental value and a right.⁵¹⁶ For example, Article 21 (4) of the African Charter asserts that States Parties “shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.”⁵¹⁷ Further, Article 23 of the Charter provides that the “principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.”⁵¹⁸ The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) also establishes a “legal framework for solidarity, cooperation, promotion of durable solutions and

508. CRC, *supra* note 12, pmb. ¶¶ 7, 11.

509. *General Comment No. 15*, *supra* note 209, ¶ 83.

510. *General Recommendation No. 32*, *supra* note 69, n. 38.

511. *General Recommendation No. 34: On the Rights of Rural Women*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 63rd Sess., ¶ 13, U.N. Doc. CEDAW/C/GC/34 (2016).

512. *General Recommendation No. 35*, *supra* note 206, ¶¶ 28, 35(a)–(b).

513. *General Recommendation No. 37*, *supra* note 71, ¶ 46.

514. Arab Charter on Human Rights, *supra* note 80, art. 1(3).

515. Treaty on European Union Feb. 7, 1992, 1992 O.J. (C 191) 1. See also *id.* pmb. ¶ 7, arts. 2, 3(3), (5), 21, 24(2)–(3) (on international and regional solidarity duties).

516. African Charter, *supra* note 144, pmb. ¶ 4, arts. 21(4), 23, 29(4); African Children’s Charter, *supra* note 12, arts. 11(2)(f), 31(c); African Women’s Protocol, *supra* note 204, pmb. ¶ 9 (recognizes the crucial role of women in the preservation of African values, including solidarity).

517. African Charter, *supra* note 144, art. 21(4).

518. *Id.* art. 23.

mutual support between the States Parties in order to combat displacement and address its consequences.⁵¹⁹

(10) International solidarity is further embedded in the national constitutions of several States.⁵²⁰ For example, Article 3 of the Nicaraguan Constitution provides:

The struggle for peace and the establishment of a just world order represent fundamental commitments of the Nicaraguan nation. We therefore oppose all forms of colonialist and imperialist domination and exploitation and declare our solidarity with all countries fighting against oppression and discrimination.⁵²¹

The commitment to solidarity also extends to future generations, as illustrated by the Portuguese Constitution.⁵²² Article 66 (2) of the Portuguese Constitution expresses intergenerational solidarity by mandating the State to “promote the rational use of national resources, while safeguarding their ability to renew themselves and maintain ecological stability, with respect to the principle of intergenerational solidarity.”

11. *Learning from and Upholding the Rights of Indigenous Peoples*

- a) *In implementing and upholding the rights of future generations, States and non-state actors should draw inspiration and guidance from Indigenous Peoples’ knowledges, cultures and traditional practices which contribute to sustainable and equitable development and the proper management of the environment.*
- b) *Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, and other resources, and to uphold their responsibilities to future generations in this regard. States must respect and take active measures to protect the sovereignty of Indigenous Peoples over the lands, territories and resources they have traditionally owned, occupied or otherwise used or acquired.*
- c) *States must respect and protect the rights of Indigenous Peoples to maintain their institutions, traditional lifestyles, languages, cultures, knowledge systems, and spiritual ontologies for the benefit of present and future generations of Indigenous Peoples and for future generations of humankind.*

Commentary

Learning from Indigenous Peoples

(1) Principle 2 recognizes the rights of Indigenous Peoples, whose knowledge and practices in sustainable natural and cultural resource management and conservation—developed and maintained over centuries or millennia—continue to benefit all generations.⁵²³ This recognition

519. African Union (AU) Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) art. 2(c), Oct. 23, 2009, 49 I.L.M. 86 (2010).

520. See generally Tamar H. Brandes, *Solidarity as a Constitutional Value*, 27 Buff. Hum. Rts. L. Rev. 59–89 (2021).

521. Constitución Política de la República de Nicaragua [Nicar. Const.] art. 1(3), La Gaceta, Diario Oficial, Jan. 9, 1987.

522. Constituição da República Portuguesa [Port. Const.] art. 66(2), 7th rev. ed. 2005.

523. See Commentary, Princ. 2. See also Thomas Banyacya, Hopi Spiritual Elder, 1972, HOPI PROPHECY – Two Paths: Destruction or Survival, Youtube (Feb. 12, 2020), <https://www.youtube.com/watch?v=-UkHwjz4i1k>; Oren Lyons, Onondaga Chief and Faithkeeper, *Looking Toward the Seventh Generation*, Presentation, Am. Indian Studies Program, Univ. of Ariz., Tucson, Ariz. (Apr. 17, 2008), <https://nnigovernance.arizona.edu/oren-lyons-looking-toward-seventh-generation>.

aligns with the Onjisy Aki International Climate Call to Action (Onjisy Aki), developed by consensus among Indigenous Peoples sharing a “common concern for the Earth and future generations.”⁵²⁴ The Onjisy Aki stresses that the first step toward returning to a “balanced way of life, founded on stewardship of the Earth” rests on centering and revitalizing Indigenous knowledge systems and traditional wisdom.⁵²⁵ Principle 11 implicitly recognizes that all generations owe a great debt to past and present generations of Indigenous Peoples that have preserved vital knowledge systems and cultural and ecological wisdom despite centuries of colonial violence, erasure, misappropriation, and exploitation from oppressive systems.⁵²⁶ In this respect, the Kari-Oca I Declaration and Indigenous Peoples’ Earth Charter of 1992 (Indigenous Peoples’ Earth Charter) asserts that “despite centuries of deprivation, assimilation, and genocide,” Indigenous Peoples maintain the inalienable rights to their “lands and territories, to all our resources – above and below – and to our waters,” and further declare an “ongoing responsibility to pass these onto the future generations.”⁵²⁷

(2) In *Bámaca-Velasquez v. Guatemala*, the Separate Opinion of Judge Cançado Trindade of the Inter-American Court of Human Rights underscored the significance of intergenerational solidarity across temporal and spatial dimensions, highlighting the crucial role of Indigenous Peoples in assisting all of humanity in linking time and space where living generations, their ancestors, and descendants live in close harmony with the natural environment.⁵²⁸ In this regard, Principle 11 endorses a mutual relationship between “learning from” and simultaneously “upholding” Indigenous Peoples’ rights. In learning from Indigenous Peoples to realize the rights of future generations, their contribution must not be trivialized, nor should it enrich others at the expense of Indigenous Peoples, who collectively own and pass Indigenous knowledges and practices down for the betterment of present and future generations.⁵²⁹ Obtaining guidance from Indigenous Peoples rests on their ongoing participation and their free, prior and informed consent (FPIC)⁵³⁰ to “cease attempts of assimilation and integration.”⁵³¹ Indigenous Peoples must be “entirely involved in any decision” and “must be given all the information” before their consent is given.⁵³² To avoid the misappropriation, exploitation, “plunder, plagiarism, undue exposure and use” of Indigenous Peoples’ traditional knowledges by third parties, the Indigenous Peoples Earth Charter states:

524. *The Onjisy Aki International Climate Calls to Action*, ¶ 1 (2017) <http://www.onjisy-aki.org/onjisy-aki-international-climate-calls-action> [hereinafter Onjisy Aki].

525. *Id.* at 2, ¶ 1.

526. Beijing Declaration of Indigenous Women, NGO Forum, U.N. 4th World Conf. on Women, Huairou, Beijing, China, ¶ 5 (1995).

527. *Kari-Oca I Declaration and Indigenous Peoples’ Earth Charter*, World Conf. of Indigenous Peoples on Territory, Env’t, & Dev., Kari-Oca, Braz., May 25–30, ¶¶ 6, 7 (1992) [hereinafter Indigenous Peoples’ Earth Charter].

528. *Bámaca-Velásquez v. Guat.*, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶¶ 6–14, 28 (2000) (separate opinion by Cançado Trindade, J.).

529. Indigenous Peoples’ Earth Charter, *supra* note 527, ¶¶ 84–109.

530. Free, prior and informed consent (FPIC) as stipulated in UNDRIP, *supra* note 141, arts. 10, 11(2), 19, 28, 29(2), 32(2).

531. Indigenous Peoples’ Earth Charter, *supra* note 527, ¶ 70.

532. *Id.* ¶ 70. See also *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Observations on Consultation Processes, Victoria Tauli-Corpuz*, U.N. H.R.C., 45th Sess., Agenda Item 3, ¶¶ 47–71, U.N. Doc. A/HRC/45/34 (2020); *Study of the Expert Mechanism on the Rights of Indigenous Peoples, Free, Prior and Informed Consent: A Human Rights-Based Approach*, U.N. H.R.C., 39th Sess., Agenda Items 3 & 5, U.N. Doc. A/HRC/39/62 (2018).

As creators and carriers of civilization which have given and continue to share knowledge, experience and values with humanity, we require that our right to intellectual and cultural properties be guaranteed and that mechanisms for each implementation be in favour of our peoples and studied in depth and implemented.⁵³³

(3) Obtaining guidance from Indigenous Peoples requires a strong commitment by States and non-State actors to revisit intellectual property regimes that do not adequately acknowledge and compensate Indigenous Peoples' scientific and cultural knowledges and contribution.⁵³⁴ Although international human rights law and several conventions of the World Intellectual Property Organization (WIPO) protect the intellectual property of Indigenous Peoples, States and non-State actors must develop "effective measures" "in conjunction with indigenous people" to recognize Indigenous Peoples' self-articulated understandings and regulatory mechanisms of their intellectual property.⁵³⁵ To capture the collective ownership dimensions and benefit-sharing ethos of Indigenous Peoples' intellectual property, States and non-State actors must fully adhere to the human rights obligations emanating from these conventions and enable Indigenous communities to further develop appropriate mechanisms to safeguard their intellectual property for future generations.⁵³⁶ For example, Indigenous Peoples' knowledges are typically preserved and entrusted to designated custodians.⁵³⁷ Recognizing and supporting these custodians will safeguard the integrity and authenticity of Indigenous knowledge and cultural artifacts, enabling their proper transmission to future generations.⁵³⁸ The safeguarding of the intellectual heritage of Indigenous Peoples is specifically important for learning from Indigenous Peoples in the equitable and sustainable management of natural resources, as well as biodiversity conservation efforts to realize the rights of future generations.

Learning from Indigenous Peoples' resource management and biodiversity conservation

533. Indigenous Peoples' Earth Charter, *supra* note 527, ¶¶ 101–04.

534. *General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary or Artistic Production*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 35th Sess., ¶¶ 18(b)(ii), 32, 45, U.N. Doc. E/C.12/GC/17 (2006).

535. UNDRIP, *supra* note 141, art. 31. See also Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, 1st Int'l Conf. on the Cult. & Intell. Prop. Rts. of Indigenous Peoples, Whakatane, June 12–18 1993, Aotearoa, N.Z. (1993); Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, *adopted* May 13–24, 2024, World Intellectual Property Organization (WIPO), Diplomatic Conf., GRATK/DC/7 (2024); *Leaflet No. 12: WIPO and Indigenous Peoples*, OHCHR, U.N. Doc. HR/PUB/13/12, Rev.1 (2013).

536. See, e.g., Declaration on Indigenous Peoples' Rights to Genetic Resources and Indigenous Knowledge, Indigenous Peoples Council on Biocolonialism, U.N. Permanent Forum on Indigenous Issues, 6th Sess., pmb. ¶ 4, May 14–25, 2007 [hereinafter Indigenous Genetic Resources and Knowledge Declaration]; Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, Secretariat of the Convention on Biological Diversity, U.N. Doc. UNEP/CBD/COP/DEC/X/42 (2010) [hereinafter Tkarihwaié:ri CBD Code]; Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, *adopted* Oct. 29, 2010, 3008 U.N.T.S. 3, U.N. Doc. UNEP/CBD/NP/COP-MOP/1/10 (*entered into force* Oct. 12, 2014) [hereinafter Nagoya Protocol on Access and Benefit-Sharing of Genetic Resources]; Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, *adopted* Aug. 9, 2010, African Regional Intellectual Property Organization (*entered into force* Feb. 11, 2016) [hereinafter Swakopmund Protocol on Traditional Knowledge and Expressions]; Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, UNESCO & WIPO (1985).

537. Hēmi Whaanga & Paora Mato, *The Indigenous Digital Footprint*, in ROUTLEDGE HANDBOOK OF CRITICAL INDIGENOUS STUDIES 447–64 (Brendan Hokowhitu et al. eds., 2021) (ebook).

538. *Id.*

(4) Numerous international legal instruments affirm the value of Indigenous knowledge in connection with conservation and sustainable development.⁵³⁹ Indigenous Peoples' territories harbor roughly eighty percent of the world's remaining biodiversity, and their success in protecting biodiversity is due to their practices in the intergenerational management of natural resources.⁵⁴⁰ In comparison to the paradigms of individual ownership, privatization, and development—paradigms that have contributed to environmental pollution, land degradation, and the erosion of biodiversity—Indigenous Peoples have, across generations, upheld traditions of sustainability, acting as stewards of natural resources and systems to preserve them for both present and future generations.⁵⁴¹ The 2012 Kari-OCA 2 Declaration of Indigenous Peoples Global Conference on Rio+20 and Mother Earth called for culture to be recognized as the fourth pillar of sustainable development in international law, alongside the economic, social, and environmental pillars, emphasizing the need for a cultural shift toward intergenerational thinking.⁵⁴²

(5) In the present generation's quest for "ecological recovery and resilience of humankind and the natural world,"⁵⁴³ Indigenous Peoples' traditional knowledges offer crucial guidance for enhancing food security, protecting ecosystems, and mitigating climate change,⁵⁴⁴ while their expertise in medicinal plants and sustainable farming is vital for ensuring future generations' access to natural resources.⁵⁴⁵ Examples include the "Traditional Owners of the Kimberley region of Western Australia," who protect the Fitzroy River as "a living ancestral being" that "must be protected for present and future generations."⁵⁴⁶ These traditional owners work together by applying traditional practices to protect the Fitzroy catchment, conduct impact assessments before approving fracking, and establish buffer zones to prevent oil, gas, irrigation, and dam mining in the area.⁵⁴⁷ In a similar effort, Indigenous Peoples in Timor Leste have successfully recovered once exploited land, revitalizing it by expanding mangrove forests to safeguard the coastline.⁵⁴⁸ They have implemented temporary fishing bans, which have led to substantial improvements in the health of coral reef ecosystems.⁵⁴⁹ The Lenca People in Honduras have developed sophisticated "regenerative agriculture" through farming and harvesting practices of

539. Convention on Biological Diversity, *supra* note 96, art. 8(j); Rio Declaration on Environment and Development, *supra* note 97, princ. 22; Indigenous Peoples' Earth Charter, *supra* note 527, princ. 56; Universal Declaration on the Rights of Rivers, pmbl. ¶ 12 (Earth Law Ctr. et al., 2020) [hereinafter the Universal Declaration of the Rights of Rivers].

540. U.N. Dep't of Pub. Info., *Indigenous Peoples' Collective Rights to Lands, Territories, and Resources*, ¶ 2 (2018).

541. *Kari-OCA 2 Declaration: Indigenous Peoples Global Conference on Rio+20 and Mother Earth*, Rio de Janeiro, Braz., June 17–22, 2012, 4–5 [hereinafter Kari-OCA 2 Declaration]. See also, Mirriam A. Frank, *The Future We Don't Want: Indigenous Peoples at RIO+20*, Cultural Survival Q. (2012); Eugenia Recio & Dina Hestad, *Indigenous Peoples: Defending an Environment for All*, Pol'y Br. No. 36, Int'l Inst. for Sustainable Dev. 1 (2022).

542. Kari-OCA 2 Declaration, *supra* note 541, ¶ 6.

543. *Lima Declaration of the World Conference of Indigenous Women: Progress and Challenges Regarding the Future We Want*, ¶ 6, Lima, Peru, Oct. 28–30, 2013.

544. *Mandaluyong Declaration of the Global Conference on Indigenous Women*, Climate Change & REDD Plus, Legend Villas, Mandaluyong, Metro Manila, Phil., ¶ 2, Nov. 18–19, 2010.

545. Rio+20 Int'l Conf. of Indigenous Peoples on Self-Determination & Sustainable Dev., Rio de Janeiro, Braz., §§ 1, 3, June 19, 2012.

546. *Fitzroy River Declaration*, Traditional Owners' Meeting, Fitzroy Crossing, Kimberley Region, W. Austl., Nov. 2–3, 2016 (Austl.).

547. *Id.* ¶¶ 1–8.

548. Special Rapporteur on the Rights of Indigenous Peoples, *Indigenous Women and Knowledge*, ¶ 34, U.N. Doc. A/HRC/51/28 (2022).

549. *Id.*

“rotational cultivation” to preserve the integrity of the land and ecosystems.⁵⁵⁰ Likewise, the Samburu and the Laikipia Maasai in Kenya restrict and demarcate farming and animal grazing to small patches of land, allowing large areas to recover for future generations.⁵⁵¹

(6) Indigenous groups also share seed conservation techniques intercommunally and intergenerationally.⁵⁵² Some Indigenous groups preserve different seeds through smoking and herbal preservation methods, planting only if suitable according to the environmental conditions of the season.⁵⁵³ The Declaration of Tecpán Protecting our Ancestral Origins in order to Guarantee the Food Sovereignty of Our Future Generations (Declaration of Tecpán) calls for respecting Indigenous territories as “Food Sovereignty Zones” to restore traditional, chemical-free seeds and foods, reversing the harm caused by pesticides, genetically modified seeds, and other imposed developments.⁵⁵⁴ The Declaration of Tecpán indicates that through the spiritual significance of corn, Indigenous Peoples maintain their collective way of life, sharing with neighbors and ensuring prosperity for future generations and all living beings.⁵⁵⁵

(7) Indigenous communities also possess invaluable knowledge through unique methodologies for gathering climate-related data, significantly enhancing disaster risk reduction strategies.⁵⁵⁶ These methods, including sensory observations of weather patterns and traditional forecasting using wind, sea, and celestial cues, enable present generations to anticipate and mitigate seasonal disruptions.⁵⁵⁷ In regions like Rapu-Rapu in the Philippines and Aceh in Indonesia, Indigenous wisdom is transmitted to future generations in teachings of olfactory discernment from the sea to predict impending storms or typhoons.⁵⁵⁸ These interventions and practices embody a profound commitment to upholding Indigenous Peoples’ responsibilities to safeguard the well-being of future generations.

(8) Principle 11 asserts that learning from Indigenous Peoples for the realization of the human rights of future generations requires upholding the recognized rights owed to Indigenous Peoples, their ancestors, and future generations. This is essential because Indigenous Peoples are important intergenerational trustees and guardians of humanity’s ecological and cultural heritage.⁵⁵⁹ For example, the Universal Declaration on the Rights of Rivers maintains that each

550. Erik Hoffner, *Agroforestry: An Ancient Indigenous Technology with Wide Modern Appeal*, Mongabay (Jul. 22, 2019), <https://news.mongabay.com/2019/07/agroforestry-an-ancient-indigenous-technology-with-wide-modern-appeal-commentary/>.

551. Ole Kaunga, *Indigenous Traditional Knowledge by the Laikipia Maasai and the Samburu*, *supra* note 154, at 12.

552. Special Rapporteur on the Rights of Indigenous Peoples, *Indigenous Women and Knowledge*, ¶ 35, U.N. Doc. A/HRC/51/28 (2022); *Sustaining Our Forests, Our Rice Lands, Our Culture: Perspectives of the Pidlisian People*, Tebtebba Foundation 22 (2015).

553. Special Rapporteur on the Rights of Indigenous Peoples, *Indigenous Women and Knowledge*, ¶¶ 35, 39–48, U.N. Doc. A/HRC/51/28 (2022).

554. *Declaration of Tecpán: Protecting Our Ancestral Origins in Order to Guarantee the Food Sovereignty of Our Future Generations*, 3rd Int’l Indigenous Peoples Corn Conf., Tecpán, Guat., 2, ¶¶ 4–5, Mar. 7–9, 2017.

555. *Id.* at 1.

556. Sendai Framework for Disaster Risk Reduction 2015–2030, *adopted* June 3, 2015, G.A. Res. 69/283, U.N. GAOR, 69th Sess., annex ¶¶ 24(j), 27(h), U.N. Doc. A/RES/69/283 (2015) [hereinafter Sendai Framework for Disaster Risk Reduction]; Rajib Shaw et al., *Indigenous Knowledge: Disaster Risk Reduction*, Pol’y Note, EU, Sustainable Env’t & Ecological Dev. Soc’y & U.N. Off. for Disaster Risk Reduction – Regional Off. Asia & Pac., 1–4 (2009).

557. Chianese, *Traditional Knowledge Advantage*, *supra* note 165, at 16.

558. *Id.* 16–17.

559. See Commentary, Princ. 8.

river is entitled to legal guardians and custodianship with “at least one legal guardian being an indigenous representative for those rivers upon which indigenous communities traditionally depend.”⁵⁶⁰ Embracing Indigenous concepts of stewardship will ensure future generations have the cultural and natural resources necessary to exercise their right to self-determination, enabling them to exist, adapt, and choose their lifestyles and pathways.

Upholding the rights of Indigenous Peoples: Land, territories, and natural resources

(9) Principle 11 (b) reaffirms the recognition of the inseparable connection between Indigenous Peoples and their territories, lands, and natural resources, as established in several Indigenous declarations, conventions, and international and regional human rights standards.⁵⁶¹ Indigenous Peoples’ lands, territories, and natural resources are recognized as “living totalities” protected by Indigenous Peoples,⁵⁶² who uphold respect for ancestors and pass down their environmental legacy to future generations.⁵⁶³

(10) States must respect the inalienable right of Indigenous Peoples to sovereignty over their territories, lands, and resources.⁵⁶⁴ States must ensure that Indigenous Peoples are not dispossessed, ceased of, or denied title to their territorial property,⁵⁶⁵ which Indigenous Peoples have stewarded, owned, occupied, used, and acquired for the benefit of present and future generations.⁵⁶⁶ Due to centuries of settler, extractive, plantation, and maritime colonialism throughout various regions of the world, as well as its ongoing manifestations in neo-colonial forms of dispossession such as mining and extractive industries, Indigenous Peoples have endured devastating consequences.⁵⁶⁷ These consequences include loss of land and cultural autonomy, genocide, violence, destruction of property, disease and displacement, all of which continue to deprive future generations of Indigenous Peoples and humankind.⁵⁶⁸ Principle 11 (b)

560. Universal Declaration of the Rights of Rivers, *supra* note 539, princ. 5.

561. *E.g.*, UNDRIP, *supra* note 141, pmb. ¶¶ 6, 7, 10, art. 25; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 10, 16; *Mayagna (Sumo) Awas Tingni Community v. Nicar.*, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 149 (2001); *Afr. Comm’n H.P.R. v. Kenya*, Judgment (Reparations), App. No. 006/2012, Afr. Ct. H.P.R., ¶¶ 109–14 (June 23, 2022).

562. Indigenous Peoples’ Earth Charter, *supra* note 527, princs. 31–35.

563. UNDRIP, *supra* note 141, art. 25; *Onjisay Aki*, *supra* note 524, at 1, 2, ¶¶ 1, 3; *Sawhoyamaya Indigenous Community v. Para.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 222 (Mar. 29, 2006).

564. UNDRIP, *supra* note 141, art. 26; *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Protected Areas and Indigenous Peoples’ Rights, José Francisco Calí Tzay*, U.N. GAOR, 77th Sess., Agenda Item 69(b), ¶¶ 21, 70(e), U.N. Doc. A/77/238 (2022).

565. These include forests, mountains, grasslands, coastal and marine areas, rivers and water bodies, agricultural lands, mineral and resource-rich regions, wildlife habitats, sacred sites, and traditional knowledge and intellectual property. *See, e.g.*, UNDRIP, *supra* note 141, arts. 8(2)(b), 26(3), 27; Indigenous Peoples’ Earth Charter, *supra* note 527, princ. 32; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 19.

566. Indigenous Peoples’ Earth Charter, *supra* note 527, pmb. ¶¶ 2, 3, 5, princs. 31–52; UNDRIP, *supra* note 141, arts. 25–29; *Indigenous Peoples’ Declaration for the 2023 United Nations Water Conference* ¶ 9 (2023), https://sdgs.un.org/sites/default/files/2023-03/Indigenous%20Peoples%20Declaration%20for%20Water%20Conference_ENG.pdf.

567. UNDRIP, *supra* note 141, pmb. ¶ 6; Indigenous Peoples’ Earth Charter, *supra* note 527, princ. 53; *Final Working Paper, Indigenous Peoples and Their Relationship to Land*, Erica-Irene A. Daes, U.N. ESCOR, Comm’n on Human Rights, Sub-Comm’n on Promotion & Prot. of Hum. Rts., 53d Sess., Agenda Item 5, 21–22, U.N. Doc. E/CN.4/Sub.2/2001/21 (June 11, 2001); *Extractive Industries, Land Rights and Indigenous Populations/Communities’ Rights*, Report of the Afr. Comm’n Working Grp. on Indigenous Populations/Communities, 58th Ord. Sess., 33 (2017). *See* Commentary, Princ. 6(d).

568. *E.g.*, Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 14*, *supra* note 284, ¶ 27; American Declaration on the Rights of Indigenous Peoples, *supra* note 156, pmb. ¶ 5; Odeeth L. Morales, *Indigenous*

therefore requires that States take active and positive measures to ensure that Indigenous Peoples have complete maintenance and control over territories, lands, and resources to be transmitted to future generations.⁵⁶⁹ These measures include the delimitation, demarcation, and titling of lands and territories to ensure availability, restoration, recovery, compensation, and return, while also considering the historical ecological debt disproportionately placed on present generations of Indigenous Peoples to guarantee future generations their sovereign right to their territories, land, and resources.⁵⁷⁰

(11) Principle 11 (b), recognizing the “distinctive spiritual relationship” Indigenous Peoples have with their territories, lands, and resources must be interpreted broadly and inclusively and be determined through Indigenous Peoples’ own articulations of their cultural philosophies and practices.⁵⁷¹ The distinctive spiritual relationship Indigenous Peoples have with their territories and lands is indispensable to their “existence, well-being and full-development.”⁵⁷² If this relationship is not respected and protected, it will lead to the “degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.”⁵⁷³ Indigenous Peoples’ territories, lands, and resources are thus inextricably connected to the expression, discovery, use, and teaching of Indigenous Peoples’ knowledge, arts, and cultures, and the control over traditional territories, lands, and resources is “essential to the continued transmission of Indigenous Peoples’ heritage to future generations, and its full protection.”⁵⁷⁴

Upholding the rights of Indigenous Peoples: Cultural heritage

(12) Principle 11 (c) arises from the recognition that Indigenous Peoples possess a rich living heritage that is integral to the realization of the human rights of future generations. The Principles and Guidelines for the Protection of the Heritage of Indigenous People[s] stipulate that safeguarding Indigenous Peoples’ cultural heritage “benefits all of humanity” as it strengthens the adaptability and creativity of the “human species as a whole.”⁵⁷⁵ To respect and protect Indigenous Peoples’ cultural heritage requires that Indigenous Peoples “be recognized as the primary guardians and interpreters of their cultures, arts and sciences, whether created in the

Peoples and Intergenerational Equity in Mexico, in INTERGENERATIONAL JUSTICE IN SUSTAINABLE DEVELOPMENT TREATY IMPLEMENTATION: ADVANCING FUTURE GENERATIONS’ RIGHTS THROUGH NATIONAL INSTITUTIONS 492–506 (Marie-Claire Cordonier Segger et al. eds., 2021); CHRISTINE J. WINTER, SUBJECTS OF INTERGENERATIONAL JUSTICE: INDIGENOUS PHILOSOPHY, THE ENVIRONMENT AND RELATIONSHIPS 52–62 (2022).

569. Indigenous Peoples’ Earth Charter, *supra* note 527, princ. 3; UNDRIP, *supra* note 141, pmb. ¶ 9, arts. 25, 26; Xákmok Kásek Indigenous Community v. Para., Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 321 (2010).

570. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 6, 26; *General Recommendation No. 23: Indigenous Peoples*, U.N. GAOR, Comm. on Elim. Racial Discrim., 51st Sess., ¶ 5, U.N. Doc. A/52/18 (1997); *Mayagna (Sumo) Awas Tingni Community v. Nicar.*, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 173(2) (2001); *Xákmok Kásek Indigenous Community v. Para.*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶¶ 108–54 (2010); *Afr. Comm’n H.P.R. v. Kenya, Reparations*, App. No. 006/2012, Afr. Ct. H.P.R., ¶¶ 95, 97 (2022).

571. JESSIE HOHMANN & MARK WELLER EDS., *THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: A COMMENTARY* 410–11 (2019).

572. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 36.

573. *Id.*

574. *Preliminary Report of the Special Rapporteur on Protection of the Heritage of Indigenous People*, Erica-Irene Daes, U.N. ESCOR, Comm’n on Human Rights, Sub-Comm’n on Prevention of Discrim. & Prot. of Minorities, 46th Sess., Agenda Item 15, annex princ. 6, U.N. Doc. E/CN.4/Sub.2/1994/31 (July 8, 1994).

575. *Id.* princ. 1.

past or developed by them in the future.”⁵⁷⁶ Within this context, Principle 11 (c) of the Maastricht Principles on Future Generations has an overarching goal to maintain, preserve, and strengthen the cultural heritage of Indigenous Peoples and should be broadly understood to include ever-evolving languages, literatures, philosophies, religious and spiritual ontologies, scientific knowledge, technological advancements and communication processes, expressed through knowledge production systems and cultural practices.⁵⁷⁷ These further include human and genetic resources, seeds, medicines, designs, sports and traditional games, and visual and performing art forms.⁵⁷⁸ States should recognize Indigenous Peoples’ knowledge systems as valuable scientific and technical knowledge that is contemporary and dynamic.⁵⁷⁹

(13) Principle 11 (c) embodies Indigenous Peoples’ right to self-determination, encompassing autonomy and self-governance.⁵⁸⁰ Principle 11 (c) affirms that Indigenous Peoples have the right to maintain their distinct institutions and systems, inclusive of political, legal, economic, social, educational, healthcare, and cultural institutions.⁵⁸¹ Consequently, Indigenous Peoples have the right to self-governance by choosing their own institutions and systems, along with the right to participate fully and meaningfully in other non-indigenous or dominant State institutions and systems.⁵⁸² States and non-State actors must ensure the full participation and FPIC of Indigenous Peoples when conducting impact assessments in the design of policies and measures concerning Indigenous Peoples’ cultural heritage practiced on sacred sites, lands, and waters.⁵⁸³ When Indigenous Peoples decide to participate in non-indigenous or dominant State institutions with the view of representing future generations, States must make appropriate changes, which include addressing procedural deficits, time limits, and language barriers that deny Indigenous Peoples a voice in the realization of the human rights of future generations.⁵⁸⁴

(14) Indigenous wisdom and knowledges are deeply connected to linguistic traditions and dynamic languages. The Inter-American Court of Human Rights has emphasized the importance of language for Indigenous populations as “one of the most important elements of identity of any people, precisely because it guarantees the expression, diffusion, and transmission of their

576. *Id.* princ. 3.

577. See, e.g., *General Comment No. 23: Rights of Minorities*, U.N. GAOR, Hum. Rts. Comm., 50th Sess., ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994); Comm. on Elim. Racial Discrim., *General Recommendation No. 32*, *supra* note 39, ¶ 4(1); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 50(c); UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions pmb. ¶ 6, art. 2(1), *adopted* Oct. 20, 2005, UNESCO, 33d Sess., 2440 U.N.T.S. 311 (*entered into force* Mar. 18, 2007) [hereinafter UNESCO Convention on Cultural Diversity].

578. Indigenous Genetic Resources and Knowledge Declaration, *supra* note 536, ¶ 1; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 17*, *supra* note 534, ¶ 9 (Committee refers to “poems, novels, paintings, sculptures, musical compositions, theatrical and cinematographic works, performances and oral traditions”).

579. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 17*, *supra* note 534, ¶¶ 9, 32; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 39*, *supra* note 39, ¶¶ 2, 53, 55(e); Special Rapporteur on the Rights of Indigenous Peoples, *Indigenous Women and Knowledge*, ¶¶ 8, 28–48, U.N. Doc. A/HRC/51/28 (2022).

580. E.g., UNDRIP, *supra* note 141, art. 4.

581. UNDRIP, *supra* note 141, arts. 18, 19, 20, 33(2), 34; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 36; Comm. on Elim. Racial Discrim., *General Recommendation No. 32*, *supra* note 39, ¶ 36.

582. UNDRIP, *supra* note 141, arts. 5, 20, 33(2), 34; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 49(a).

583. See Commentary, Princs. 24(b), (c), (i), 25, 26(b).

584. HOHMANN & WELLER EDS., DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, at 312. See Commentary, Princ. 22(b).

culture.”⁵⁸⁵ States must take steps to assist Indigenous Peoples in revitalization projects,⁵⁸⁶ including those related to Indigenous languages, knowledges, and sensitivity training in school curricula, with the FPIC and active involvement of Indigenous Peoples’ representatives.⁵⁸⁷ This will foster intercultural dialogue and competencies for better understanding and respect for Indigenous cultures and languages, thereby enhancing the intergenerational transmission of living heritage.⁵⁸⁸

12. *Peasants, Local and Traditional Communities*

- a) *Peasants, local, and traditional communities, including small-scale fishers and fish workers, pastoralists, and forest-dependent communities, have a special relationship with the land, water, and natural processes on which they depend for their livelihoods. They play a vital role in conserving and restoring biodiversity, protecting cultural heritage, undertaking sustainable practices of agricultural production, and ensuring food security for present and future generations. States should draw inspiration and guidance from their knowledge, traditions, and practices.*
- b) *States must safeguard the full and equal enjoyment of all human rights to peasants and traditional communities, including, individually and collectively, their right to land; traditional knowledge; seed systems; to participate equitably in sharing the benefits arising from the utilization of plant genetic resources; and to participate in the making of decisions on matters relating to their rights. In doing so, States must ensure this knowledge, and these vital resources remain available to future generations.*

Commentary

(1) Preambular paragraph XII of the Principles highlights that peasants and traditional communities, including fishers, pastoralists, forest-dependent people, nomadic people, and rural women (PLT communities), play a key role in conserving biodiversity and ensuring adequate and sustainable food systems for both present and future generations. Principle 12 therefore stipulates that safeguarding the rights of future generations requires the full enjoyment of PLT communities’ rights. Coline Hubert notes that recognizing the rights of PLT communities “allow[s] those who care for ‘Mother Earth’ to continue to do so” and further contends that “the world’s current

585. *Álvarez v. Hond.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 141, ¶¶ 169–71 (Feb. 1, 2006).

586. UNDRIP, *supra* note 141, arts. 13, 14(1), (3), 16; *General Comment No. 13: Right to Education*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 21st Sess., ¶ 6(c), U.N. Doc. E/C.12/1999/10 (1999).

587. UNDRIP, *supra* note 141, art. 14(3); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 39, ¶ 27; *General Comment No. 11: Indigenous Children and Their Rights under the Convention*, U.N. GAOR, Comm. on Rts. Child, 50th Sess., ¶¶ 56, 62, U.N. Doc. CRC/C/GC/11 (2009); *Xákmok Kásek Indigenous Community v. Para.*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶¶ 211, 230, 301 (2010).

588. UNESCO Convention on Cultural Diversity, *supra* note 577, art. 1(c)–(e) (urges States to create an environment that would encourage the protection and promotion of Indigenous cultures); CRC, *supra* note 12, art. 29(1); African Children’s Charter, *supra* note 12, art. 11(2)(a), (2)(d) (emphasizes the role that education plays in the overall “development of [a] child’s personality, talents, and mental and physical abilities” and links those educational aims to “the preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups”).

industrial agriculture and food system is an ecological monstrosity,” with peasants as its “front-line victims, but all humanity is its victim in the long run.”⁵⁸⁹

(2) Safeguarding the rights of PLT communities is essential because, despite PLT communities producing the majority of the food consumed globally, most people considered food insecure are small-holder farmers and peasants.⁵⁹⁰ PLT communities face disruptions to their traditional farming methods and local economies, along with discrimination rooted in the stigma associated with their economic structures, labor formations, and agricultural practices.⁵⁹¹ The discrimination peasants encounter is both a cause and consequence of several challenges in defending their right to land, such as the growing number of peasants being forcibly displaced, denied land tenure and ownership, and the repression of land rights activists.⁵⁹² The current international multilateral legal framework further contributes to the growing inequality in control over land, making millions of peasants susceptible to dispossession.⁵⁹³

(3) Principle 12 endorses the broad definition of “peasants” from the UN Declaration on the Rights of Peasants (UNDROP).⁵⁹⁴ This definition encompasses “traditional communities,” “local communities,” and Indigenous Peoples living and working in rural, semi-rural, or urban areas, underscoring their common condition as peasants.⁵⁹⁵ This definition is instructive for duty bearers to consider as it addresses the multiple and intersecting categories of PLT communities.⁵⁹⁶

589. Coline Hubert, *The United Nations Declaration on the Rights of Peasants: A Tool in the Struggle for Our Common Future*, Food Sovereignty, Pub. No. 42, 96 (2019).

590. Valentine Granet, *The Human Right to Land: A Peasant Struggle in the Human Rights System*, 24 Hum. Rts. L. Rev. 1, 2 (2024).

591. Francesco Francioni, *The Peasants’ Declaration: State Obligations and Justiciability*, in THE UNITED NATIONS’ DECLARATION ON PEASANTS’ RIGHTS 4, 5 (Mariagrazia Alabrese et al. eds., 2022); United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas pmb. ¶¶ 7–13, 17–19, adopted Dec. 17, 2018, G.A. Res. 73/165, U.N. GAOR, 73d Sess., Agenda Item 74(b), U.N. Doc. A/RES/73/165 (Jan. 21, 2019) [hereinafter UNDROP]; *Peasant Farmers and the Right to Food: A History of Discrimination and Exploitation*, Jean Ziegler, U.N. H.R.C. Advis. Comm., U.N. Doc. A/HRC/AC/3/CRP.5 (2009).

592. UNDROP, *supra* note 591, pmb. ¶ 12; *Preliminary Study of the Human Rights Council Advisory Committee on the Advancement of the Rights of Peasants and Other People Working in Rural Areas*, U.N. H.R.C., 16th Sess., Agenda Item 5, ¶¶ 20–24, U.N. Doc. A/HRC/16/63 (2011); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 54–56; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 37*, *supra* note 71, ¶¶ 70, 73.

593. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 56; Olivier De Schutter, *How Not to Think of Land-Grabbing: Three Critiques of Large-Scale Investments in Farmland*, 38 J. Peasant Stud. 249, 250–55 (2011); Ruth Hall et al., *Resistance, Acquiescence or Incorporation? An Introduction to Land Grabbing and Political Reactions “From Below”*, 42 J. Peasant Stud. 467, 477–80 (2015).

594. UNDROP, *supra* note 591, art. 1; Marc Edelman, *Defining Peasants in the UNDROP*, in THE UNITED NATIONS’ DECLARATION ON PEASANTS’ RIGHTS 19–31 (Mariagrazia Alabrese et al. eds., 2022).

595. Convention on Biological Diversity, *supra* note 96, pmb. ¶ 12, art. 8(j); Rio Declaration on Environment and Development, *supra* note 97, princ. 22; Adriana Bessa & Jérémie Gilbert, *Indigenous Peoples and Traditional Local Communities in the UNDROP: Synergies and Challenges*, in THE UNITED NATIONS’ DECLARATION ON PEASANTS’ RIGHTS 32, 35 (Mariagrazia Alabrese et al. eds., 2022).

596. Comm. on Elim. Discrim. Against Women, *General Recommendation No. 34*, *supra* note 511, ¶ 14; *General Recommendation No. 34: Racial Discrimination Against People of African Descent*, U.N. GAOR, Comm. on Elim. Racial Discrim., 79th Sess., ¶¶ 3–7, U.N. Doc. CERD/C/GC/34 (2011); ICMW, *supra* note 33, pmb. ¶ 14, art. 1(1); Marc Edelman, *What Is a Peasant? What Are Peasantries? A Briefing Paper on Issues of Definition*, Prepared for the 1st Sess. of the Intergov’t Working Grp. U.N. Declaration on the Rights of Peasants and Other People Working in Rural Areas, 11–3 (Jul. 15–9, 2013); Lorenzo Cotula, *Between Hope and Critique: Human Rights, Social Justice and Re-imagining International Law from the Bottom Up*, 48 Ga. J. Int’l & Compar. L. 475, 514 (2020).

(4) Principle 12 (a) emphasizes the special relationship between PLT communities and land, water, and natural processes. This relationship is special because PLT communities depend on these resources for their livelihoods.⁵⁹⁷ This dependency exposes them to various threats to the control over these resources, impacting both present and future generations.⁵⁹⁸ In *Portillo Caceres v. Paraguay*, the Human Rights Committee considered the State's failure to prevent the mass use of agrottoxins by agribusinesses, which caused severe health impacts on a campesino farming family, resulting in the death of a relative.⁵⁹⁹ The Committee held that the State's failure to act allowed large-scale illegal fumigations to continue, polluting well-water and causing the "death of fish and livestock and the loss of crops and fruit trees on the land on which the authors live and grow crops, elements that constitute components of the authors' private life, family, and home."⁶⁰⁰

Drawing inspiration from peasants' knowledge, traditions, and practices

(5) Peasants and farming communities hold vital agricultural insights that can accelerate the realization of the human rights of present and future generations.⁶⁰¹ Through organic farming, adaptation techniques, and sustainable practices, PLT communities safeguard ecosystems and promote intergenerational human health.⁶⁰² Principle 12 (a) therefore highlights that States should draw inspiration and obtain guidance from these communities' knowledge, traditions, and practices, which are essential to preserving an Earth system capable of sustaining present and future generations.

(6) Pastoralist communities, for instance, have developed distinct cultures that adapt to local environmental conditions, raising a variety of livestock breeds to maintain genetic biodiversity.⁶⁰³ Their seasonal mobility prevents overgrazing and promotes diverse habitats, contributing to ecological resilience.⁶⁰⁴ Pastoralists' deep understanding of ecosystem processes, such as water regulation, carbon sequestration, and fire management, further enhances the sustainability of the wider environment.⁶⁰⁵ Similarly, small-scale fishers and fish workers (SSFs) represent diverse and dynamic communities, including Indigenous and traditional fisheries, engaged in small-scale fishing in both marine and inland waters.⁶⁰⁶ SSFs play a crucial role in supporting local

597. UNDROP, *supra* note 591, pmb. ¶ 6, art. 1.

598. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26, supra* note 187, ¶ 56; Bessa & Gilbert, *Indigenous Peoples and UNDROP, supra* note 591, at 34.

599. Communication No. 2751/2016 (*Portillo Caceres v. Para.*), *adopted* Oct. 9, 2019, U.N. GAOR, Hum. Rts. Comm., 126th Sess., annex ¶¶ 20–24, U.N. Doc. CCPR/C/126/D/2751/2016 (2019).

600. *Id.* ¶¶ 7.2–.5, 7.8.

601. *Report of the Special Rapporteur in Field of Cultural Rights, Climate Change, Culture and Cultural Rights, Karima Bennouna*, U.N. GAOR, 75th Sess., Agenda Item 72 (b), ¶¶ 68–71, U.N. Doc. A/75/298 (2020).

602. *Report of the Special Rapporteur on the Right to Food, Seeds, Right to Life and Farmers' Rights, Michael Fakhri*, U.N. GAOR, 49th Sess., Agenda Item 3, ¶¶ 7, 50, 76, U.N. Doc. A/HRC/49/43 (2021).

603. *AU Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities* 21 (2010); U.N. Env't Programme (UNEP), *Sustainable Pastoralism and the Post 2015 Agenda*, 1 (2015).

604. UNEP, *Pastoralism and the Green Economy – A Natural Nexus? Policy Brief*, 2 (2014); Cornelia Heine, *Pastoralists as Stewards of the Environment*, Rev. Essay, <https://vsf-international.org/wp-content/uploads/2017/01/heineD-C.pdf>.

605. *The Benefits of Pastoralism for Biodiversity and Climate Change*, Info Sheet 1 of 6, *Pastoralism, Uncertainty and Resilience: Global Lessons from the Margins*, (n.d.) <https://pastres.org/biodiversity/>.

606. Elisa Morgera & Julia Nakamura, *Shedding a Light on the Human Rights of Small-Scale Fishers: Complementarities and Contrast between the UNDROP and the Small-Scale Fisheries Guidelines*, in THE

economies and enhancing livelihoods, contributing to sustainable local development through practices passed down over generations.⁶⁰⁷ Their fishing techniques, which avoid overfishing, are essential for preserving natural resources for future generations.⁶⁰⁸ These methods also cause minimal disruption to seabeds and coral reefs, which are critical to maintaining sustainable marine ecosystems.⁶⁰⁹ Forest-dependent communities also contribute significantly to the conservation of biodiversity and the enhancement of ecosystem services. By employing adaptive practices and agroforestry methods, forest-dependent communities enrich biodiversity, improve soil quality, and bolster forests' capacity for carbon sequestration.⁶¹⁰ Their local governance systems have proven effective in preventing deforestation and facilitating reforestation, demonstrating the value of their traditional knowledge of forest management.⁶¹¹ PLT communities thus possess a living cultural heritage characterized by their self-determined and Nature-integrated practices.⁶¹² Principle 12 (b) affirms their right to maintain, control, and develop knowledge systems, traditions, and agrarian techniques.⁶¹³ States must take steps to enable PLT communities to enjoy their knowledge systems, practices, and traditions, thereby allowing sustainable agricultural production systems for the benefit of present and future generations.⁶¹⁴

Safeguarding the rights of PLT communities

(7) Principle 12 (b) holds that States must safeguard the full and equal enjoyment of all human rights of PLT communities. The Principle highlights that PLT communities must participate fully in making decisions on matters relating to their rights.⁶¹⁵ This participation should enable them to contribute to the design, planning, and implementation of measures impacting their rights and those of future generations.⁶¹⁶

(8) The UNDROP underscores the interdependence between realizing PLT communities' rights and securing the rights of future generations. Article 15 (2) mandates States to ensure peasants

UNITED NATIONS' DECLARATION ON PEASANTS' RIGHTS 62, 65–67 (Mariagrazia Alabrese et al. eds., 2022).

607. *Report of the Special Rapporteur on the Right to Food, Fisheries and the Right to Food in the Context of Climate Change*, Michael Fakhri, U.N. GAOR, 55th Sess., Agenda Item 3, ¶ 7, U.N. Doc. A/HRC/55/49 (2024); Patrick McConney et al., *Stewardship and Sustainable Practices in Small-Scale Fisheries*, in *TRANSDISCIPLINARITY FOR SMALL-SCALE FISHERIES GOVERNANCE* 181, 198 (Ratana Chuenpagdee & Svein Jentoft eds., 2019).

608. Anothy Charles et al., *Environmental Stewardship by Small-Scale Fishers*, U.N. Food & Agric. Org. (UNFAO), 5–28 (2024); Daniela Diz & Elisa Morgera, *Insights for Sustainable Small-Scale Fisheries*, in *ECOSYSTEM SERVICES AND POVERTY ALLEVIATION: TRADE-OFFS AND GOVERNANCE* 288, 288–89 (Kate Schreckenber et al. eds., 2018).

609. Special Rapporteur on the Right to Food, *Fisheries and the Right to Food*, ¶ 15, U.N. Doc. A/HRC/55/49 (2024).

610. Alain Frechette et al., *A Global Baseline of Carbon Storage in Collective Lands: Indigenous and Local Community Contributions to Climate Change Mitigation*, Rts. & Res. Initiative 3 (2018); *Declaration of Belém, IV Mt'g., States Parties to the Amazon Coop. Treaty*, 40 (Aug. 8, 2023); Caleb Stevens et al., *Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change*, World Res. Inst. 29–35 (2014).

611. Duncan Macqueen et al., *Investing in Locally Controlled Forestry: Natural Protection for People and Planet*, Int'l Inst. for Env't & Dev. 32–36 (2017).

612. UNDROP, *supra* note 591, art. 26; *Report of the Special Rapporteur in Field of Cultural Rights, Development and Cultural Rights: The Principles*, Alexandra Xanthaki, U.N. GAOR, 77th Sess., Agenda Item 69 (b), ¶ 33, U.N. Doc. A/77/290 (2022).

613. UNDROP, *supra* note 591, art. 19(2).

614. *Id.* arts. 16(4), 20(2).

615. *Id.* art. 2(3) (stipulating that participation must be “active, free, effective, meaningful and informed”).

616. *Id.* arts. 4(2)(a), 5(1), 10–11.

and rural workers have sustainable and equitable access to adequate food while respecting their cultures and “preserving access to food for future generations.” Safeguarding the rights of PLT communities requires acknowledging the universality, interrelationship, and collective nature of their rights, including labor rights, access to communal land, and traditional knowledge, which are exercised for the benefit of present and future generations.⁶¹⁷

(9) PLT communities’ rights place positive and negative obligations on States, including regulating non-State actors to realize the rights of present and future generations.⁶¹⁸ For example, the right to food of present and future generations depends on effective intervention and regulation of State and non-State actors to address commodity-based and industrial food systems that exploit PLT communities.⁶¹⁹ In the context of PLT communities’ right to participate in and enjoy the benefits of scientific progress and technological advancements, the Committee on Economic, Social and Cultural Rights specified that States should ensure that technologies “preserve, not violate, the right of peasants and other people working in rural areas to choose which technologies suit them best.”⁶²⁰ The Committee highlighted that although scientific and technological advancements have assisted in reducing famines, the impacts of some of these technologies have often deprived PLT communities of the ability to control and enjoy their own food and agricultural systems. This concern is reflected in cases documented by FIAN International, where digital carbon trading schemes negatively impacted small farmers, threatening both present and future generations’ rights.⁶²¹

Right to land

(10) Ensuring the right to land for PLT communities is essential for realizing the human rights of present and future generations, as it underpins their livelihoods and social structures.⁶²² The interrelationship of the right to land with other fundamental rights also broadens PLT communities’ rights, inclusive of an adequate standard of living, food, housing, and water.⁶²³ For instance, PLT communities’ right to water highlights the “inextricable link between water, land, and agricultural production.”⁶²⁴ The interrelationship and interdependence between the rights to

617. *Id.* p.mbl. ¶ 5, arts. 8(2), 9(1), 15(2), 16(1). See Commentary, Princ. 5.

618. UNDROP, *supra* note 591, art. 2(5); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 31; Special Rapporteur on the Right to Food, *Seeds, Right to Life and Farmers’ Rights*, ¶¶ 97(c), 98(c), U.N. Doc. A/HRC/49/43 (2021); Special Rapporteur in Field of Cultural Rights, *Development and Cultural Rights Principles*, ¶¶ 35, 38, U.N. Doc. A/77/290 (2022); Portillo Caceres v. Para., Hum. Rts. Comm., ¶¶ 2.3, 7.7 (2019).

619. Special Rapporteur on the Right to Food, *Fisheries and the Right to Food*, ¶¶ 73–78, 93, U.N. Doc. A/HRC/55/49 (2024).

620. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶ 64.

621. Philip Seufert, *How Digital Technologies Affect the Human Rights of Peasants and Small-Scale Food Producers: Power Imbalances, Dispossession and Rising Inequality*, FIAN Int’l, 5–16 (June 2023).

622. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 10, 18; Priscilla Claeys et al., *Land Is a Human Right*, in THE OXFORD HANDBOOK OF LAND POLITICS (Saturnino M. Borrás & Jennifer C. Franco eds., online ed., 2022), <https://doi.org/10.1093/oxfordhb/9780197618646.013.36>.

623. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶¶ 6, 7, 16(c); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 8, 18; Mara Tignino et al., *The Rights to Water and Sanitation and UNDROP: The Implementation Challenges of a Comprehensive Approach*, in THE UNITED NATIONS’ DECLARATION ON PEASANTS’ RIGHTS 106, 110–11 (Mariagrazia Alabrese et al. eds., 2022).

624. Tignino et al., *Rights to Water and Sanitation and UNDROP*, *supra* note 623, at 114. See also Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶¶ 6, 7, 12(a), 16(c), 29; UNDROP, *supra* note 591, art. 21.

water and land create an obligation for States to ensure the availability of adequate and good quality water for small-scale agricultural activities, from which present and future generations must benefit.⁶²⁵ States should also take measures to enable PLT communities to act as stewards of land and water for the benefit of present and future generations.⁶²⁶

(11) PLT communities' right to land includes access, ownership, control, use, and transfer, all of which are aimed at benefitting present and future generations.⁶²⁷ To address the intergenerational transmission of disadvantage,⁶²⁸ States must prevent land acquisitions that result in deprivation, dispossession, and displacement of PLT communities.⁶²⁹ In addition, States must limit the excessive concentration and control of land by a small number of powerful domestic as well as transnational State and non-State actors, farmers, and agribusinesses.⁶³⁰ It is also important for States to harmonize their obligations concerning land rights for both Indigenous Peoples and PLT communities.⁶³¹

(12) States must further ensure that PLT communities can enjoy their land rights individually, collectively, or individually and collectively. Customary land tenure systems and collective ownership models should be recognized and legally safeguarded, with States adopting innovative communal land ownership mechanisms, including for nomadic peasants.⁶³² The right to land extends to secure and equitable tenure rights for small-scale fishers (SSFs), comprising access to aquatic resources and adjacent lands.⁶³³

Equitable sharing of benefits arising out of the utilization of genetic plant resources

(13) Principle 12 (b) asserts that PLT communities have the right to participate equitably in sharing the benefits arising from the utilization of genetic plant resources (GPRs) for the benefit of both present and future generations. GPRs are a crucial element of biodiversity that PLT

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625. Tignino et al., *Rights to Water and Sanitation and UNDROF*, *supra* note 623, at 114; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶¶ 6, 12(a)–(b); UNDROF, *supra* note 591, art. 21.
626. Special Rapporteur on the Right to Food, *Fisheries and the Right to Food*, ¶ 7, U.N. Doc. A/HRC/55/49 (2024).
627. UNDROF, *supra* note 591, art. 17(1); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 22.
628. UNDROF, *supra* note 591, art. 17(2); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 12–14, 33; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 34*, *supra* note 511, ¶¶ 56–57. See Commentary, Princ. 6(b).
629. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 7, 29, 32, 43, 48–49.
630. UNDROF, *supra* note 591, art. 17(6); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 14, 27, 36–37, 47, 60; Lorenzo Cotula, *The Right to Land, in THE UNITED NATIONS' DECLARATION ON PEASANTS' RIGHTS* 91, 95–99 (Mariagrazia Alabrese et al. eds., 2022).
631. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 19; *Lhaka Honhat (Our Land) Ass'n v. Arg.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400, ¶¶ 136–37, 173–83 (Feb. 6, 2020).
632. UNDROF, *supra* note 591, art. 17(1), (3); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 18, 36–37, 59; Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, UNFAO, § 4.4 (rev'd 2022).
633. Charles et al., *Environmental Stewardship by Small-Scale Fishers*, *supra* note 608, at 32–44; Special Rapporteur on the Right to Food, *Fisheries and the Right to Food*, ¶¶ 47, 68, 77, U.N. Doc. A/HRC/55/49 (2024).

communities have developed and conserved over generations,⁶³⁴ and they remain essential for sustainable agricultural practices and food security both now and in the future.⁶³⁵

(14) Equitable benefit-sharing of genetic plant resources is imperative for the livelihoods of PLT communities since they depend on its preservation and use.⁶³⁶ States must protect the right of PLT communities to identify the holders of their genetic plant resources, either individually or collectively within or between communities.⁶³⁷ States must also ensure that PLT communities participate in defining the terms on which the resources must be preserved and shared, and how the benefits must be distributed.⁶³⁸ The collective ownership aspect of GPRs must be taken into account, as PLT communities act as guardians of these resources for present and future generations.⁶³⁹ Benefit-sharing must be both equitable and accessible to PLT communities to ensure that those who conserve and manage GPRs benefit in the short- and long-term.⁶⁴⁰ States must also prevent the exploitation of PLT communities and ensure they are fairly compensated on terms they have participated in formulating.⁶⁴¹

(15) Elsa Tsioumani argues that the current international legal framework governing the benefit-sharing of GPRs of PLT communities is inequitable, largely due to trade-related agreements that do not include PLT communities as full partners.⁶⁴² To address this imbalance, States must ensure that PLT communities benefit from and actively contribute to the enforcement of multilateral agreements governing genetic resources.⁶⁴³ The Special Rapporteur on the right to food, Olivier De Schutter, has proposed documenting traditional seed varieties and knowledge in catalogs and gene banks, with contributors receiving compensation on their terms, while States support local and small-scale farmers by facilitating sustainable seed exchanges for the benefit of present and future generations.⁶⁴⁴

(16) The aspects of the global trade framework for benefit-sharing that enable the commodification of the genetic plant resources of PLT communities must be urgently

634. ITPGRFA, *supra* note 402, pmb. ¶ 13, art. 2.

635. Nagoya Protocol on Access and Benefit-Sharing of Genetic Resources, *supra* note 536, pmb. ¶¶ 19–22; Sandrine Le Teno et al., *The Right to Seeds: Using the Commons As a Sustainable Governance Scheme to Implement Peasants' Rights?*, in THE UNITED NATIONS' DECLARATION ON PEASANTS' RIGHTS 119–33 (Mariagrazia Alabrese et al. eds., 2022).

636. Special Rapporteur on the Right to Food, *Seeds, Right to Life and Farmers' Rights*, ¶¶ 56–61, U.N. Doc. A/HRC/49/43 (2021); Karine Peschard et al., *The Rights to Seeds in Africa*, Acad. Briefing No. 22 (2023), <https://www.geneva-academy.ch/joomlatools-files/docman-files/Briefing%2019.pdf>.

637. UNDROP, *supra* note 591, art. 19(1); Nagoya Protocol on Access and Benefit-Sharing of Genetic Resources, *supra* note 536, arts. 5, 7, 12.

638. UNDROP, *supra* note 591, arts. 19(1)(b)–(d), 19(2).

639. Tkarihwaié:ri CBD Code, *supra* note 536, art. 5.

640. *Id.* art. 14.

641. Special Rapporteur on the Right to Food, *Seeds, Right to Life and Farmers' Rights*, ¶ 99(a), U.N. Doc. A/HRC/49/43 (2021).

642. ELSA TSIUMANI, FAIR AND EQUITABLE BENEFIT-SHARING IN AGRICULTURE: REINVENTING AGRARIAN JUSTICE 9–31 (2021).

643. Special Rapporteur on the Right to Food, *Seeds, Right to Life and Farmers' Rights*, ¶¶ 62–72, U.N. Doc. A/HRC/49/43 (2021).

644. *Report of the Special Rapporteur on the Right to Food, Seed Policies and the Right to Food: Enhancing Agrobiodiversity and Encouraging Innovation*, Olivier De Schutter, U.N. GAOR, 64th Sess., Agenda Item 71(b), ¶¶ 49–50, 57(a), U.N. Doc. A/6/170 (2009).

addressed.⁶⁴⁵ Commodification promotes genetic homogeneity, leading to the neglect or extinction of important species and adversely impacts the livelihoods of PLT communities, depriving present and future generations of the diverse genetic resources essential for biodiversity and food security.⁶⁴⁶

II. STATE OBLIGATIONS

13. *Obligations to Respect, Protect, and Fulfill the Human Rights of Future Generations*
 - a) *States have obligations to respect, protect, and fulfill the human rights of future generations.*
 - b) *These obligations extend to all conduct of States, whether through actions and omissions, and whether undertaken individually or collectively, including decisions made in their capacity as members of international or regional organizations. Such conduct includes, but is not limited to, the adoption or implementation of policies, practices, programs, and legislation.*
 - c) *Failure to comply with these obligations constitutes a violation of the rights of future generations.*
 - d) *States must ensure an effective remedy for failure to respect, protect, and fulfill these rights as set out in section IV (Accountability and Remedies).*

Commentary

(1) Principles 2 and 5 and their supporting Commentary affirm that future generations are entitled to human rights under international law. Under the UN Charter, Members pledge “to take joint and separate action” in cooperation with the UN to achieve its purposes,⁶⁴⁷ which include “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”⁶⁴⁸ As the subsequent body of regional and UN human rights treaties has established, human rights norms impose both positive and negative obligations on States Parties.⁶⁴⁹ States are obligated to refrain from conduct that violates human rights and to adopt positive measures to ensure the effective enjoyment of human rights by rights holders.⁶⁵⁰ This combination of negative and positive obligations is expressed through a widely used typology—the obligation “to respect, protect and fulfil” human rights.⁶⁵¹ Although the

645. TSIOUMANI, FAIR AND EQUITABLE BENEFIT-SHARING, *supra* note 642, at 88–90; Special Rapporteur on the Right to Food, *Seeds, Right to Life and Farmers’ Rights*, ¶¶ 17, 36, 48, 74, 96(c), 97(c), U.N. Doc. A/HRC/49/43 (2021).

646. Comm. on Elim. Discrim. Against Women, *General Recommendation No. 34*, *supra* note 511, ¶¶ 60–62; Special Rapporteur on the Right to Food, *Seeds, Right to Life and Farmers’ Rights*, ¶¶ 11–13, U.N. Doc. A/HRC/49/43 (2021).

647. U.N. Charter, *supra* note 28, art. 56.

648. *Id.* art. 55(c).

649. On positive and negative obligations in the context of international and regional human rights treaties, see generally Dinah Shelton & Ariel Gould, *Positive and Negative Obligations*, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW 562–84 (Dinah Shelton ed., 2013).

650. Regional international human rights treaties require human rights norms to be guaranteed both *de jure* and *de facto* (i.e., in law and in fact). See, e.g., *Access to Justice for Women Victims of Violence in the Americas*, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II, ¶ 26 (Jan. 20, 2007); CEDAW, *supra* note 33, art. 2(a).

651. See HENRY SHUE, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE AND US FOREIGN POLICY 53 (1st ed., 1980) (on the origins of the influential typology of obligations imposed by human rights). Another important source

Principles adopt this typology, it should be noted that the categories are not watertight and that the classification and application of State obligations are contested and vary according to context.⁶⁵²

(2) The obligation to respect imposes an obligation on States to refrain from conduct that, directly or indirectly, interferes with the enjoyment of human rights.⁶⁵³ The obligation to protect requires the State to take effective legislative and other measures to prevent third parties, such as corporations, from violating the relevant rights.⁶⁵⁴ The obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial, and other measures to achieve the full realization and enjoyment of human rights.⁶⁵⁵ The obligation to promote human rights is integral to the positive measures that the State must take to fulfill rights. According to the African Commission, the obligation to promote human rights requires States to adopt measures to enhance people's awareness of their rights and to provide accessible information relating to the programs and institutions adopted to realize them.⁶⁵⁶ In his report on intergenerational solidarity and the needs of future generations, the UN Secretary-General noted the critical role of education in promoting intergenerational solidarity and justice.⁶⁵⁷

(3) The effective protection and fulfillment of the human rights of future generations requires States to take steps to anticipate and prevent violations of their rights. This obligation to prevent human rights violations aligns with Henry Shue's concept of "the responsibility to take due care," which entails the obligation "to foresee and prevent serious harms" in certain circumstances. It entails an obligation to create institutions designed not only to reduce incentives to deprive people of their rights but also to actively prevent such deprivations, even unintended deprivations.⁶⁵⁸ This obligation is also recognized in the Joint Statement on Human Rights and Climate Change adopted by five UN treaty bodies:

for the use of the typology in international human rights law is the *Report of the Special Rapporteur on the Right to Adequate Food as a Human Right*, Asbjørn Eide, Comm'n on Hum. Rts. Sub-Comm'n on Prevention of Discrim. & Prot. of Minorities, ¶¶ 66–70, 112–16, U.N. Doc. E/CN.4/Sub.2/1997/23 (Jul. 7, 1987). See also Scheinin, *Characteristics of Human Rights Norms*, *supra* note 245, at 27.

652. See, e.g., Ida E. Koch, *Dichotomies, Trichotomies or Waves of Duties?*, 5 Hum. Rts. L. Rev. 81–103 (2005); Aiofe Nolan, *Privatization and Economic and Social Rights*, 40 Hum. Rts. Q. 815–58 (2018).

653. In the context of CPRs, see, e.g., *General Comment No. 31: Nature of the General Legal Obligations Imposed on States Parties to the Covenant*, U.N. GAOR Hum. Rts. Comm., ¶ 6, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004). In the context of ESCRs, see, e.g., *General Comment No. 18: The Right to Work*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., ¶ 2, U.N. Doc. E/C.12/GC/18 (2005); *Maastricht Guidelines on Violations of ESCRs*, *supra* note 1, ¶ 6.

654. For a recent elaboration of this duty in the context of business activities, see Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 14–22.

655. See *General Comment No. 12*, *supra* note 39, ¶ 15 (Committee divides the duty to fulfill into "facilitate" and to "provide"). See also *Maastricht Guidelines on Violations of ESCRs*, *supra* note 1, ¶ 6.

656. *Nairobi Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples Rights*, Afr. Comm'n H.P.R., ¶¶ 8–9 (2010) [hereinafter *Nairobi Principles and Guidelines on ESCRs in the African Charter*] (art. 25 of the African Charter, *supra* note 144, imposes a duty on States Parties "to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood").

657. *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 27, U.N. Doc. A/68/322 (2013).

658. HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE AND US FOREIGN POLICY* 89–91 (2d ed., 1996).

Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations.⁶⁵⁹

(4) International law recognizes that State conduct may result in a violation of human rights, whether it consists of actions or omissions.⁶⁶⁰ The human rights of future generations may also be violated through States' actions or their failures to act when they have an obligation to do so. Similarly, the human rights of future generations can be violated by States acting either individually or collectively.⁶⁶¹ The latter would occur, for example, when several States fail to take the measures reasonably required to ensure that future generations can enjoy the full and equal enjoyment of human rights. State responsibility for violations of the human rights of future generations also extends to decisions made by States in their capacity as members of international or regional organizations.⁶⁶² Human rights create obligations of an objective character and it would not be consistent with the nature of these obligations for a State to purport to divest itself of these obligations through its membership in an international or regional organization.⁶⁶³ Thus, for example, the Committee on Economic, Social and Cultural Rights has consistently affirmed that States are not absolved of their obligations under the ICESCR when they act and make decisions as members of international financial institutions in general, and the International Monetary Fund in particular.⁶⁶⁴

(5) States' failure to comply with their obligations to respect, protect and fulfill the human rights of future generations constitutes a violation of human rights and gives rise to their obligation to ensure an effective remedy, in line with the Principles and sources set out in the Commentary to Section IV below.

14. *Scope of Jurisdiction*

Each State has obligations to respect, protect and fulfill the human rights of future generations in any of the following circumstances:

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659. *Joint Statement on Human Rights and Climate Change*, ¶ 10, U.N. Doc. HRI/2019/1 (2020) also cited in Communication No. 107/2019 (*Sacchi v. Germ.*), adopted Sept. 6–24, 2021, U.N. GAOR, Comm. on Rts. Child, 88th Sess., ¶ 9.6, U.N. Doc. CRC/C/88/D/107/2019 (2021).
660. *International Law Commission, Report of the Fifty-Third Session, Responsibility of States for Internationally Wrongful Acts*, U.N. GAOR, Int'l L. Comm'n, 53d Sess., pt. 1, art. 1(1), U.N. Doc. A/56/10 (2001) [hereinafter Int'l L. Comm'n ARSIWA] ("An internationally wrongful act of a State may consist in one or more actions or omissions or a combination of both."). See also *Maastricht Guidelines on Violations of ESCRs*, *supra* note 1, ¶ 14–15 (on the division of conduct into "violations through acts of commission" and "acts of omission").
661. Int'l L. Comm'n ARSIWA, *supra* note 660, art. 16 (aid or assistance in the commission of an internationally wrongful act), *id.* art. 47(1) ("Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act").
662. See Commentary, Princ. 26.
663. DE SCHUTTER, *INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 34, at 262–84; Olivier De Schutter, *Human Rights and the Rise of International Organisations: The Logic of Sliding Scales in the Law of International Responsibility*, in *ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS BY INTERNATIONAL ORGANISATIONS* 51–128 (Jan Wouters et al. eds., 2010). See also *Maastricht Principles on ETOs*, *supra* note 1, princ. 15, cmt. at 1118–20.
664. See, e.g., *General Comment No. 14*, *supra* note 284, ¶ 39; *General Comment No. 25*, *supra* note 39, ¶ 83; *Statement on Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., ¶ 9, U.N. Doc. E/C.12/2016/1 (2016); *Statement on Universal Affordable Vaccination against Coronavirus Disease (COVID-19), International Cooperation and Intellectual Property*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., ¶¶ 10–13, U.N. Doc. E/C.12/2021/1 (2021).

- a) *Situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law;*
- b) *Situations over which its conduct brings about foreseeable effects in the enjoyment of human rights for present or future generations;*
- c) *Situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence, or to take measures to realize the human rights of future generations in accordance with international law.*

Commentary

(1) Principle 14 reproduces Principle 9 of the Maastricht Principles on ETOs, a precursor to the current Maastricht initiative.⁶⁶⁵ The content of the Maastricht Principles on ETOs can be applied to all human rights, as they are drawn from sources related to both ESCRs and CPRs, with the exception of limited instances where they address concepts that are unique to ESCRs such as “progressive realization” and the related duty to prioritize core obligations.⁶⁶⁶

(2) The Commentary to Principle 9 of the Maastricht Principles on ETOs explains that jurisdiction is essentially an application of State power, or authority to act, pursuant to or as an expression of sovereignty.⁶⁶⁷ As described in the Commentary to Principle 24 on Extraterritorial Obligations below, it is widely recognized by human rights tribunals, including the International Court of Justice, that States may sometimes exercise jurisdiction outside their national territory and in such cases, they are bound by their human rights obligations.⁶⁶⁸

(3) Principle 14 identifies three distinct situations where jurisdiction extends extraterritorially. Principle 14 (a) relates to situations where the concerned State has effective control over either the territory, natural or juridical persons (including corporations), both, or otherwise exercises State authority over them. Examples include military occupation or peacekeeping operations, and locations such as embassies, military bases, and detention facilities. Principle 14 (b) refers to situations where a State, through its conduct, influences the enjoyment of human rights outside its national territory, even in the absence of effective control or authority over a situation or a person. Principle 14 (b) acknowledges that the obligations of a State under international human rights law may be triggered when its responsible authorities know or should have known that the conduct of the State will bring about substantial human rights effects in another territory. Notably, paragraphs (a) and (b) of Principle 14 refer to situations in which a State *is* acting, whether or not it *should* be acting. It therefore applies to State conduct irrespective of whether it is or is not within the State’s entitlement to act under international law. If a State is acting outside of its entitlement to exercise jurisdiction under international law, it is liable for any human rights abuses caused or exacerbated by its conduct. Finally, Principle 14 (c) concerns situations where a State is required to take measures in order to support the realization of human rights outside

665. *Maastricht Principles on ETOs*, *supra* note 1.

666. Ashfaq Khalfan & Ian Seiderman, *Extraterritorial Human Rights Obligations: Wider Implications of the Maastricht Principles and the Continuing Accountability Challenge*, in *CHALLENGING TERRITORIALITY IN HUMAN RIGHTS LAW: BUILDING BLOCKS FOR A PLURAL AND DIVERSE DUTY-BEARER REGIME* 15, 18–24 (Wouter Vandenhole ed., 2015).

667. *Maastricht Principles on ETOs*, *supra* note 1, cmt. at 1105–09.

668. See Commentary, Princ. 24, ¶¶ 2–8.

its national territory. This specifically refers to the role of international assistance and cooperation outlined in human rights treaties.

15. *Limits to the Entitlement to Exercise Jurisdiction*

The State's obligation to respect, protect and fulfill the human rights of future generations does not authorize a State to act in violation of the United Nations Charter and general international law.

Commentary

(1) Principle 15 reproduces Principle 10 of the Maastricht Principles on ETOs. While Principle 14 of the Maastricht Principles on Future Generations explains the basis for the mandatory application of human rights obligations to a State's conduct that has extraterritorial effect, Principle 15 clarifies that the duty of the State to respect, protect, and fulfill the human rights of future generations outside its national territory does not authorize it to engage in any measures that violate the UN Charter or general international law. A State's conduct to protect and fulfill the human rights of future generations abroad should only be carried out within its entitlement to exercise jurisdiction. Thus, for example, a State may not exercise force unlawfully on the territory of other States in order to protect human rights, except where this is permitted by the UN Charter.

(2) Article 2 (4) of the UN Charter requires UN Member States to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations." The sovereignty of the State on the national territory of which a situation occurs that another State seeks to influence, as well as the principle of the equality of all States, may impose limits to the scope of the duty of that other State to contribute to the full realization of human rights. In the words of the International Court of Justice,

the principle [of non-intervention] forbids all States . . . to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. . . . Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones.⁶⁶⁹

16. *Obligation to Respect the Human Rights of Future Generations*

States must refrain from conduct they foresee, or ought reasonably to foresee, will create or contribute to, a substantial risk of violations of the human rights of future generations.

Commentary

(1) Principle 16 expresses the general obligation of States under international human rights law to respect human rights by refraining from conduct that violates human rights. This obligation

669. *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J., ¶ 205 (June 27).

forms an integral part of the doctrine of international and regional human rights treaties and their interpretation by relevant supervisory bodies.

(2) In the case of future generations, the occurrence or materialization of the harm will occur in the future and be suffered by future persons. However, the fact that the harm will only materialize in the future does not imply that liability cannot be attributed to actors for their role in producing expected harm. Although legal systems—especially in tort law—paradigmatically assign liability for harm *ex post facto*, responsibility and liability can also be assigned *ex ante*. Support for the assignment of *ex ante* liability can be found both in moral philosophy and in examples drawn from contemporary developments in tort law.⁶⁷⁰ Some tort systems have followed this reasoning and begun to hold perpetrators liable for expected and probable harm and for increasing the risk of harm.⁶⁷¹ As Christopher Schroeder notes, risk assessment technologies can be used to produce these calculations of expected harm.⁶⁷² Anticipatory obligations have been recognized in diverse fields of international environmental, biomedical, and human rights law.⁶⁷³ Incorporating an *ex ante* or anticipatory approach to liability is consistent with the *pro personae* principle of international human rights law, which requires that human rights be interpreted as extensively as possible when recognizing individuals' rights and conversely, as restrictively as possible when the norm imposes limits on the enjoyment of human rights.⁶⁷⁴ It follows that States cannot avoid responsibility for harm to future generations simply because the harm has not yet materialized. On the contrary, they can incur responsibility for violating an obligation to respect the rights of future generations by virtue of the expected harm they cause. The obligation to respect the human rights of future generations also flows from the principle that, at the very least, present generations owe future generations an obligation to avoid and minimize any harm to the latter's human rights.

(3) As the harm to human rights will occur at a future time and to future generations, it is appropriate to adopt a standard of reasonable foreseeability for incurring state responsibility. This is a well-known liability standard in tort law.⁶⁷⁵ It is also an accepted standard of responsibility in human rights law for conduct that constitutes a threat to the enjoyment of human rights. Thus, for example, in its General Comment 36 on the right to life, the Human Rights Committee has commented that:

670. Christopher H. Schroeder, *Corrective Justice and Liability for Increasing Risks*, 37 UCLA L. Rev. 439–79 (1990) (in this preeminent contribution, Schroeder argues that moral theory has for long assessed the responsibility of agents from the *ex ante* vantage point. That is, these theories examine the state of mind, reasons, objectives, intentions, knowledge, and principles of deliberation of the agent at the moment of choosing to engage in an action. The *ex ante* view, as an approach to tort law, requires an understanding of “expected harm,” which may be defined as the summation of all possible, or reasonably possible, harms multiplied by the probability of each one happening).

671. See Ariel Porat & Alex Stein, *Liability for Future Harm*, in PERSPECTIVES ON CAUSATION 221–41 (Richard Goldberg ed., 2011).

672. Schroeder, *Corrective Justice and Liability*, supra note 670, at 461–66.

673. Rumiana Yotova, *Anticipatory Duties under the Human Right to Science and International Biomedical Law*, 28 Int'l. J. Hum. Rts. 397–415 (2023).

674. The principle also commands that in case of conflicts between human rights norms, the norm that better protects the individual's rights should prevail. Hayde Rodarte Berbera, *The Pro Personae Principle and its application by Mexican Courts*, 4 Queen Mary Hum. Rts. Rev. 1, 9 (2017). See also Valerio de Oliveira Mazzuoli & Dilton Ribeiro, *The Pro Homine Principle as an Enshrined Feature of International Human Rights Law*, 9 Indon. J. Int'l & Comp. L. 77–99 (2014).

675. See Vladislava Stoyanova, *Common Law Tort of Negligence as a Tool for Deconstructing Positive Obligations under the European Convention on Human Rights*, 24 Int'l. J. Hum. Rts. 632, 643–45 (2019).

The obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats that life-threatening situations that can result in loss of life. States Parties may be in violation of article 6 even if such threats and situations do not result in loss of life.⁶⁷⁶

(4) It is also appropriate in this context to assign state responsibility for a substantial risk of harm⁶⁷⁷ to human rights that should have been foreseeable by the actor, through the taking of reasonable precautionary measures. In the context of positive obligations, the European Court of Human Rights applies the standard of whether the State “knew or ought to have known” about the risks of harm.⁶⁷⁸ Similarly, States’ conduct leading to “*intentional or otherwise foreseeable and preventable* life-terminating harm or injury” amounts to the deprivation of the right to life under Article 6 of the ICCPR.⁶⁷⁹

17. *Violations of the Obligation to Respect*

Violations of obligations to respect the human rights of future generations include, but are not limited to:

- a) *Depriving future generations of sustainable and equitable enjoyment of natural resources, Nature or ecosystems necessary for the enjoyment of their rights to life, health, and an adequate standard of living for themselves and their families, including the rights to food, water, housing and sanitation;*
- b) *Unsustainably using and depleting natural resources;*
- c) *Polluting or degrading ecosystems;*
- d) *Contributing to a decline in biodiversity or to anthropogenic climate change;*
- e) *Creating human rights risks resulting from the development and/or deployment of technologies for reducing greenhouse gas emissions or removal of carbon from the atmosphere;*
- f) *Engaging in conduct that results in discriminatory access to natural resources and benefits enjoyed by future generations as compared to present generations;*
- g) *Impairing the ability of future generations to prevent and respond to climate change and other forms of environmental harm;*
- h) *Censoring, withholding, intentionally misrepresenting, or criminalizing the provision of information related to the climate crisis;*
- i) *Entering or remaining in bilateral or multilateral agreements that undermine the enjoyment of rights by future generations;*
- j) *Interfering with the voluntary perpetuation of a community or peoples’ cultural legacy to future generations;*

676. Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 7 (citing Communication No. 821/1998 (Chongwe v. Zam.), adopted Nov. 25, 2000, U.N. GAOR, Hum. Rts. Comm., 90th Sess., annex ¶ 5.2, U.N. Doc. CCPR/C/70/D/821/21998 (2000); İlhan v. Turk., App. No. 22277/93, Eur. Ct. H.R., ¶¶ 75–76 (2000); Rochela Massacre v. Colom., Judgment, Inter-Am Ct. H.R. (ser. C) No. 163, ¶ 127 (2007). See also Sacchi v. Arg., *supra* note 352, ¶ 10.7 (Committee also endorsed the standard of reasonable foreseeability in the context of establishing jurisdiction for extraterritorial human rights violations).

677. See Commentary, Princ. 29, ¶ 5 (on the meaning of a “substantial” risk of suffering a human rights violation).

678. Osman v. U.K., App. No. 87/1997/871/1083, Eur. Ct. H.R., ¶ 116 (1998); Opuz v. Turk., App. No. 33401/03, Eur. Ct. H.R., ¶ 129 (2009). It should be noted that although scholars have argued that restricting liability to a “real and immediate risk to the life of an identified individual or individuals,” the standard applied by the Eur. Ct. H.R. is stricter than the reasonable foreseeability standard under the tort law of negligence model. See Stoyanova, *Tort of Negligence*, *supra* note 675, at 644.

679. Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 6 (emphases added) (citations omitted).

- k) Taking measures that are foreseeably likely to result in displacement of future generations from their land, territories, and/or housing, or that deprive them of enjoyment of Nature, ecosystems or natural resources;
- l) Developing or using surveillance or data gathering technologies or other means of social control that will infringe the human rights of future generations;
- m) Developing or using artificial intelligence systems that threaten the full enjoyment of human rights of future generations;
- n) Developing or using weapons of mass destruction, including, but not limited to, inhumane conventional weapons, nuclear and biological weapons;
- o) Producing or facilitating the production of any waste material or hazardous substance of a kind that or at a scale that cannot be soundly managed, and safely and completely disposed of by the generation that produced it;
- p) Developing or using reproductive technologies that threaten or violate future generations' human rights, including but not limited to, the rights to privacy, health, safety, bodily integrity, and equality;
- q) Unjustifiably reducing expenditure on programs and institutions required to realize human rights, thus putting future generations at risk of diminished enjoyment of their rights.

Commentary

(1) Principle 17 provides examples of violations of the obligation to respect the rights of future generations. Each of the examples reflects the substantive content of the obligation itself, which, if not complied with, results in a violation.

(2) Example 17 (a) refers to the obligation of present generations to avoid “irreversible impacts on the ecosystems that provide the basis for human life, both now and in the future.”⁶⁸⁰ According to Article 4 of the UNESCO Declaration on Future Generations, present generations “have the responsibility to bequeath to future generations an Earth which will not one day be irreversibly damaged by human activity.”⁶⁸¹ Article 4 further stipulates:

Each generation inheriting the Earth temporarily should take care to use natural resources reasonably and ensure that life is not prejudiced by harmful modifications of the ecosystems and that scientific and technological progress in all fields does not harm life on earth.

Article 17 (a) establishes that State conduct should not result in depriving future generations of the “sustainable and equitable enjoyment” of natural resources, particularly for disadvantaged and marginalized groups. International human rights standards emphasize the importance of not imperiling equitable and sustainable access to natural resources for marginalized and disadvantaged groups.⁶⁸² The Committee on the Rights of the Child noted in relation to the right of every child to life in Article 6 of the CRC:

The obligations under article 6 of the Convention also apply to structural and long-term challenges arising from environmental conditions that may lead to direct threats to the right to life and require taking appropriate measures to tackle those conditions, for example, the sustainable use of resources needed for covering basic needs and the protection of healthy ecosystems and biodiversity. Special

680. *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 25, U.N. Doc. A/68/322 (2013).

681. UNESCO Declaration on Future Generations, *supra* note 88.

682. See, e.g., *General Comment No. 4: The Right to Adequate Housing*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 6th Sess., ¶¶ 8(b), 11, U.N. Doc. E/1992/23 (1991); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 1, 13–19, 22–25, 38; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 34*, *supra* note 511, ¶¶ 56–59.

measures of protection are needed to prevent and reduce child mortality from environmental conditions and for groups in vulnerable situations.⁶⁸³

The Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, has also noted that patterns of neglect and discrimination against disadvantaged and marginalized groups both contribute to and result from the unsustainable use and management of natural resources such as water.⁶⁸⁴

(3) According to Principle 17 (b), the unsustainable use and depletion of natural resources constitutes an example of a violation of the duty to respect the human rights of future generations. Support for this example is found in both international environmental and human rights law.⁶⁸⁵ The Committee on Economic, Social and Cultural Rights has noted in General Comment 26 on land:

States parties should engage in long-term planning to maintain the environmental functions of land. They should prioritize and support land uses with a human rights-based approach to conservation, biodiversity and the sustainable use of land and other natural resources. They should also, inter alia, facilitate the sustainable use of natural resources by recognizing, protecting, and promoting traditional uses of land, adopting policies and measures to strengthen livelihoods of people based on natural resources and the long-term conservation of land.⁶⁸⁶

Without long-term planning and the sustainable use and management of natural resources, the environmental foundations on which all human rights depend will be increasingly eroded.

(4) Principle 17 (c) refers to the pollution and degradation of natural resources as a violation of the obligation to respect the human rights of future generations. Pollution and degradation of natural resources expose future generations to conditions of life increasingly incompatible with human rights. Support for this example can be found in a variety of sources, including international environmental law,⁶⁸⁷ general international law,⁶⁸⁸ and international human rights law. For example, the Committee on the Rights of the Child has commented:

Younger children are particularly susceptible to environmental hazards due to their unique activity patterns, behaviours and physiology. Exposure to toxic pollutants, even at low levels, during developmental windows of increased vulnerability can easily disrupt the maturational processes of the brain, organs and the immune system and cause disease and impairment during and beyond childhood, sometimes after a substantial latency period. The effects of environmental contaminants may even persist in future generations. States should consistently and explicitly consider the impact of exposure to toxic substances and pollution in early life.⁶⁸⁹

It is also a well-established fact that pollution and environmental degradation disproportionately affect groups that experience systemic patterns of discrimination on grounds such as

683. Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶ 21.

684. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Sustainability* ¶¶ 50–52, U.N. Doc. A/HRC/24/44 (2013).

685. Convention on Biological Diversity, *supra* note 96, art. 2.

686. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 38 (citations omitted).

687. Convention on the Law of the Sea, *supra* note 493, arts. 207–12; Watercourses Convention, *supra* note 413, art. 21; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal pmb., art. 4, Mar. 22, 1989, 1673 U.N.T.S. 57 (entered into force May 5, 1992) [hereinafter Basel Convention].

688. UNESCO Declaration on Future Generations, *supra* note 88, art. 5(2) (“The present generations should ensure that future generations are not exposed to pollution which may endanger their health or their existence itself.”).

689. Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶ 24.

Indigeneity,⁶⁹⁰ race, economic and social situation or poverty, gender, or an intersection of these.⁶⁹¹ International, regional, and domestic courts have also affirmed the right to be protected from pollution and other forms of environmental harm.⁶⁹²

(5) Principle 17 (d) reflects States' obligations to refrain from contributing to a decline in biodiversity or anthropogenic climate change.⁶⁹³ A vast array of international environmental law⁶⁹⁴ and human rights law standards affirm this obligation.⁶⁹⁵

(6) Principle 17 (e) concerns the human rights risks resulting from the development and deployment of technologies for reducing greenhouse gas emissions or removing carbon from the atmosphere. As the Committee on Economic, Social and Cultural Rights has commented in the context of carbon sequestration projects:

States shall avoid those policies for mitigating climate change, such as efforts for carbon sequestration through massive reforestation or protection of existing forests, which lead to different forms of land grabbing, affecting especially land and territories of populations in vulnerable situations such as peasants or indigenous peoples.⁶⁹⁶

The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (Special Rapporteur on toxics and human rights), Marcos Orellana, has also noted that "some greenhouse gas emissions reduction technologies can increase exposure to hazardous substances and wastes."⁶⁹⁷ He remarked in this regard:

690. *Report of the Special Rapporteur on Toxics and Human Rights, Impact of Toxic Substances on the Human Rights of Indigenous Peoples*, Marcos Orellana, U.N. GAOR, 77th Sess., Agenda Item 69(b), ¶ 6, U.N. Doc. A/77/183 (2022).

691. See Commentary, Princ. 6. See also Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Climate Justice and Racial Justice*, U.N. Doc. A/77/549 (2022) (on environmental racism); M Ihejirika, *What is Environmental Racism?*, NRDC (May 24, 2023), <https://www.nrdc.org/stories/what-environmental-racism>; *End of Mission Statement by the Special Rapporteur on Toxics and Human Rights*, Marcos Orellana, Visit to S. Afr. (Aug. 11, 2023), <https://www.ohchr.org/en/press-releases/2023/08/south-africa-must-tackle-crude-legacy-environmental-racism-and-toxic>.

692. See, e.g., *Ostra v. Spain*, App. No. 16798/90, 20 Eur. Ct. H.R. (ser. A) ¶¶ 51–52, 54 (1994); *Guerra v. It.*, App. No. 14967/89, 26 Eur. Ct. H.R. (ser. A) ¶ 60 (1998); *LIDHO v. Côte d'Ivoire*, Judgment, App. No. 041/2016, Afr. Ct. H.P.R., ¶¶ 182–86 (2023); *Groundwork Trust v. Min. of Env't Affairs*, Case No. 39724/2019 (Gauteng High Ct., Pretoria Div., 2020) (S. Afr.); *Leghari v. Pak.*, W.P. No. 25501/2015, at 5, 22.

693. UNFCCC, *supra* note 98, art. 1(2) defines "climate change" as "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods." This concept of "anthropogenic climate change" in Principle 17(d) aligns to this definition. See also Derek Bell, *Does Anthropogenic Climate Change Violate Human Rights?*, 14 Crit. Rev. Int'l Soc. & Pol. Phil. 99–124 (2011).

694. E.g., UNFCCC, *supra* note 98; Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted Dec. 11, 1997, 2303 U.N.T.S. 148, 37 I.L.M. 22 (1998) (*entered into force* Feb. 16, 2005) [hereinafter *Kyoto Protocol*]; Paris Agreement, *supra* note 99; Convention on Biological Diversity, *supra* note 96; Kunming-Montreal Global Biodiversity Framework, adopted Dec. 19, 2022, U.N. CBD/COP/DEC/15/4 (Dec. 19, 2022).

695. See, e.g., *Report of the Special Rapporteur on Climate Change and Human Rights, Supporting Climate Change Litigation and Advancing the Principle of Intergenerational Justice*, Ian Fry, U.N. GAOR, 78th Sess., Agenda Item 73(b), U.N. Doc. A/78/255 (July 28, 2023); *Joint Statement on Human Rights and Climate Change*, ¶ 10, U.N. Doc. HRI/2019/1 (2020).

696. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 56.

697. *Report of the Special Rapporteur on Toxics and Human Rights, Toxic Impacts of Some Proposed Climate Change Solutions*, Marcos Orellana, U.N. H.R.C., 54th Sess., Agenda Item 3, ¶ 21, U.N. Doc. A/HRC/54/25 (Jul. 13, 2023). See also William C.G. Burns, *Human Rights Dimensions of Bioenergy with Carbon Capture and Storage: A Framework for Climate Justice in the Realm of Climate Geoengineering*, in CLIMATE JUSTICE:

Such climate technologies cannot be justified on account of their emissions reduction potential. Decarbonization strategies must also pursue detoxification pathways. Ultimately, a just transition towards a safe climate system requires integrated solutions that do not attempt to solve one environmental and human rights crisis by creating or aggravating another.⁶⁹⁸

In this context, Principle 9 on Prevention and Precaution has special application for the obligation to respect the human rights of present and future generations.⁶⁹⁹

(7) Principle 17 (f) affirms that a failure by States to respect the obligation of non-discrimination between present and future generations in their access to natural resources and benefits constitutes a violation of the human rights of future generations. Support for this example can be found in both the Principle on Equality and Non-Discrimination and the Principle on Intragenerational and Intergenerational Human Rights Obligations.⁷⁰⁰ The UNESCO Declaration on Future Generations proclaims:

In order to ensure that future generations benefit from the richness of the Earth's ecosystems, the present generations should strive for sustainable development and preserve living conditions, particularly the quality and integrity of the environment. . . . The present generations should preserve for future generations natural resources necessary for sustaining human life and for its development.⁷⁰¹

As noted in the summary of deliberations of the UN System Common Principles on Future Generations:

The United Nations system should aim to promote an equitable and just distribution of benefits, risks and costs in all sectors, including socioeconomic sectors, between present and future generations. International agreements, including those related to children, young people and older persons, call for ensuring an equitable distribution of resources and opportunities both within and between generations.⁷⁰²

(8) Principle 17 (g) reflects the obligation of States to refrain from conduct that would impair or curtail the ability of future generations to respond to climate change or other forms of environmental harm. This reflects the fundamental principle that the ability of future generations to respond effectively to climate and other ecological challenges should not be curtailed by the conduct of present generations. This includes shifting exclusive or disproportionate burdens on future generations in responding to climate change and other environmental threats.⁷⁰³

(9) According to Principle 17 (h), various forms of suppressing or misrepresenting information relating to the climate crisis constitute a violation of the obligation to respect the human rights of future generations. Without the free flow of accurate, timely, and up-to-date information relating to the climate crisis, it is impossible to effectively guarantee the human rights of future generations. In this context, freedom of expression and information is an enabling right that is

CASE STUDIES IN GLOBAL AND REGIONAL GOVERNANCE CHALLENGES 149–70 (Randall Abate ed., 2017).

698. Special Rapporteur on Toxics and Human Rights, *Toxic Impacts of Some Proposed Climate Change Solutions*, ¶ 21, U.N. Doc. A/HRC/54/25 (2023).

699. See Commentary, Princ. 9.

700. See Commentary, Princs. 6, 7.

701. UNESCO Declaration on Future Generations, *supra* note 88, art. 5(1), (3).

702. *U.N. System Common Principles on Future Generations* princ. 2, U.N. Doc. CEB/2023/1/Add.1 (2023).

703. *E.g.*, *Urgenda v. Neth.* 2015, *supra* note 122, ¶ 4.57; *Neubauer v. Germ.*, *supra* note 22, ¶¶ 182–88.

essential for guaranteeing the other human rights of future generations.⁷⁰⁴ The Committee on Economic, Social and Cultural Rights has stated that the obligation to respect the right to participate in and enjoy the benefits of scientific progress and its applications requires States parties to refrain from “disinformation, disparagement or deliberate misinformation intended to erode citizen understanding of and respect for science and scientific research.”⁷⁰⁵

(10) Principle 17 (i) concerns State obligations to refrain from entering or remaining in bilateral or multilateral agreements that undermine future generations’ enjoyment of human rights.⁷⁰⁶ This is an extension of the human rights obligation that States should refrain from all conduct, including entering into international agreements, that could violate the rights of those within their own jurisdiction or extraterritorially.⁷⁰⁷ As an example, the Energy Charter Treaty⁷⁰⁸ is often criticized as an example of a multilateral agreement that protects fossil fuel investments, further allowing corporations to sue governments for implementing climate policies, thereby hindering States from transitioning to renewable energy sources.⁷⁰⁹

(11) Principle 17 (j) reflects a well-established norm forming part of the cultural rights of communities and the rights of Indigenous Peoples. The Committee on Economic, Social and Cultural Rights has commented that States must “respect and protect cultural heritage in all its forms, in times of war and peace and natural disasters.” It goes on to affirm that:

Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures.⁷¹⁰

Article 7 of the UNESCO Declaration on Future Generations also proclaims:

With due respect for human rights and fundamental freedoms, the present generations should take care to preserve the cultural diversity of humankind. The present generation have the responsibility to identify, protect and safeguard the tangible and intangible cultural heritage and to transmit this common heritage to future generations.⁷¹¹

The UNDRIP affirms that Indigenous Peoples have the right to revitalize, utilize, develop, and pass on their histories, languages, oral traditions, philosophies, writing systems, and literature to future generations. It also emphasizes their right to designate and retain names for their communities, places, and people.⁷¹² Any interference by States with this well-established right of Indigenous Peoples to transmit their cultural legacy to future generations would constitute a

704. See Commentary, Princ. 23. See also Lisa Chamberlain, *Assessing Enabling Rights: Striking Similarities in Troubling Implementation of the Rights to Protest and Access to Information in South Africa*, 16 *Afr. Hum. Rts. L. J.*, 365–84 (2016) (on the concept of access to information and the right to protect as enabling rights).

705. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶ 42. See also Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 48.

706. See Commentary, Princ. 24.

707. In the context of the impact of business activities impacting on economic, social and cultural rights, see Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 25–29.

708. Energy Charter Treaty, *opened for signature* Dec. 17, 1994, 2080 U.N.T.S. 95, 34 I.L.M. 360 (1995) (*entered into force* Apr. 16, 1998).

709. See, e.g., Felix Ekardt et al., *Energy Charter Treaty: Towards a New Interpretation in the Light of Paris Agreement and Human Rights*, 15 *Sustainability* 1–18 (2023); Tibisay Morgandi & Lorand Bartels, *Exiting the Energy Charter Treaty under the Law of Treaties*, 34 *King's L. J.* 145–69 (2023).

710. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 50 (a).

711. UNESCO Declaration on Future Generations, *supra* note 88.

712. UNDRIP, *supra* note 141, art. 13. See also Commentary, Princ. 11.

violation of the obligation to respect the human rights of future generations. Such conduct deprives future generations of their right to inherit the cultural legacy of their ancestors.

(12) Principle 17 (k) concerns conduct that would have the foreseeable effect of displacing future generations from their land, territories, or housing, or depriving them of the enjoyment of Nature, ecosystems, or natural resources. Such deprivations would imperil future generations' rights to adequate housing, land, and the natural resources and ecosystems on which the enjoyment of all human rights depends. The displacement of disadvantaged groups, communities, and Indigenous Peoples from their land and housing has intergenerational impacts on the human rights of their descendants, including their rights to adequate housing, access to land, and an adequate standard of living. Certain groups are particularly susceptible to the intergenerational impacts of displacement from their land, housing, and the natural environment. Thus, for example, the Committee on Economic, Social and Cultural Rights has acknowledged that women "are disproportionately affected by poor access to use of, control over and bad governance of land, threatening their Covenant rights and potentially leading to discrimination, including intersectional discrimination."⁷¹³ The African Women's Protocol also stipulates that "[w]omen shall have the right to fully enjoy their right to sustainable development." In this respect, States Parties to the African Women's Protocol must take "all appropriate measures" to, amongst others, "promote women's access to and control over productive resources such as land and guarantee their rights to property."⁷¹⁴

(13) Principle 17 (l) highlights the threats to the human rights of future generations that arise from technologies of surveillance or data-gathering. While emerging technologies can benefit human rights, they also pose significant risks if unregulated, including violations of privacy, security of the person, the right to work and to just and favorable conditions of work, and the right to be free from discrimination.⁷¹⁵ In the latter context, the Human Rights Council Advisory Committee has noted:

In machine learning, discriminatory data may perpetuate discriminatory patterns and negatively affect individual rights, especially in respect of health data. A very similar problem is observed in discriminatory hiring practices and in credit scoring. As public and private organizations seek to use automated tools to provide cheaper and faster services, rigorous human rights due diligence of these tools is essential.⁷¹⁶

In a similar vein, the UN Working Group of Experts on the Rights of People of African Descent has highlighted the risks of new technologies perpetuating racial stereotypes and profiling.⁷¹⁷ It has called for the development of new technologies to reflect a strong commitment to human

713. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 13. See also Comm. on Elim. Discrim. Against Women, *General Recommendation No. 34*, *supra* note 511, ¶¶ 56–57 (recognizing rural women's rights to land, natural resources, including water, seeds, forests, and fisheries as fundamental rights, and emphasizing the obligation of States Parties to take all measures necessary "to achieve rural women's substantive equality in relation to land and natural resources").

714. African Women's Protocol, *supra* note 204, art. 19. See also *id.* art. 21 guaranteeing women's rights in the context of inheritance, including in relation to the matrimonial house.

715. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 72–76.

716. *Report of the Human Rights Council Advisory Committee, Possible Impacts, Opportunities and Challenges of New and Emerging Digital Technologies with regard to the Promotion and Protection of Human Rights*, U.N. H.R.C., 47th Sess., Agenda Item 5, ¶ 22, U.N. Doc. A/HRC/47/52 (May 19, 2021).

717. *Report of the Working Group of Experts on People of African Descent*, U.N. GAOR, 42d Sess., Agenda Item 9, ¶¶ 70–75, U.N. Doc. A/HRC/42/59 (2019).

rights and human dignity. The reliance on algorithms to identify risk, target misconduct, and carry out operations should not violate the human rights of people of African descent.⁷¹⁸

(14) The Special Rapporteur on the right to privacy, Joseph Cannataci, has expressed concern regarding the lack of human rights safeguards in relation to data-gathering and surveillance trends, noting that “modern laws on surveillance increasingly allow for the creation, access and analysis of personal data without adequate authorization and supervision.”⁷¹⁹ The African Commission has underscored the importance of ensuring that AI technologies, robotics and other new and emerging technologies “which have far-reaching consequences for humans” remain under “meaningful human control in order to ensure that the threat that they pose to fundamental human rights is averted.”⁷²⁰ The Human Rights Committee has also noted that new technologies impact the right to peaceful assembly, offering opportunities for online and hybrid gatherings but also risking interference that can hinder assemblies.⁷²¹ While surveillance technologies “can be used to detect threats of violence and thus protect the public, they can also infringe on the right to privacy and other rights of participants and bystanders and have a chilling effect [on the right to peaceful assembly].”⁷²² The Committee further urged law enforcement to remain vigilant about the potential discriminatory effects of certain policing tactics, especially when using new technologies.⁷²³ These threats posed by emerging technologies not only affect the rights of present generations but also create significant risks for the human rights of future generations, particularly in the absence of effective human rights-based regulatory frameworks for anticipating and mitigating the human rights risks posed by such technologies over time. In the 2024 Global Digital Compact adopted at the Summit of the Future, the UN General Assembly committed to establishing “appropriate safeguards to prevent and address any adverse impact on human rights arising from the use of digital and emerging technologies and protect individuals against violations and abuses of their human rights in the digital space, including through human rights due diligence and establishing effective oversight and remedy mechanisms (all SDGs).”⁷²⁴

(15) Similar concerns arise with the use of AI systems that threaten the full enjoyment of the human rights of future generations, which are addressed in Principle 17 (m). These systems can offer many benefits in diverse spheres, such as employment, health care, housing, and responding to various environmental challenges facing humanity. However, certain forms of AI development may pose serious threats to human existence and Earth ecosystems, the nature and extent of which may not be fully appreciated at present. They may also, as noted by the Committee on Economic, Social and Cultural Rights, “intensify social inequalities by increasing unemployment and segregation in the labour market, and algorithms incorporated in artificial

718. *Id.* ¶ 76.

719. *Report of the Special Rapporteur on the Right to Privacy, Governmental Surveillance Activities, Joseph A. Cannataci*, U.N. GAOR, 34th Sess., Agenda Item 3, ¶ 27, U.N. Doc. A/HRC/34/60 (2017).

720. *Resolution on the Need to Undertake a Study on Human and Peoples’ Rights and Artificial Intelligence (AI), Robotics and Other New and Emerging Technologies in Africa*, Afr. Comm’n H.P.R., ACHPR/Res.473 (EXT.OS/XXXI), ¶ 6 (2021).

721. *General Comment No. 37: Right of Peaceful Assembly*, U.N. GAOR, Hum. Rts. Comm., 129th Sess., ¶ 10, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020).

722. *Id.*

723. *Id.* ¶ 81.

724. *Global Digital Compact, adopted Sept. 22, 2024*, G.A. Res. 79/1, U.N. GAOR, 79th Sess., Agenda Item 3, annex I ¶ 23(b), U.N. Doc. A/RES/79/1 (Sept. 22, 2024) [hereinafter 2024 Global Digital Compact].

intelligence can reinforce discrimination.⁷²⁵ In its Final Report, *Governing AI for Humanity*, the AI Advisory Body appointed by the UN Secretary-General highlighted the risks associated with AI:

Problems such as bias in AI systems and invidious AI-enabled surveillance are increasingly documented. Other risks are associated with the use of advanced AI, such as the confabulations of large language models, high resource consumption and risks to peace and security. AI-generated disinformation threatens democratic institutions. Putting together a comprehensive list of AI risks for all time is a fool's errand, given the ubiquitous and rapidly evolving nature of AI and its uses; we believe that it is more useful to look at risks from the perspective of vulnerable communities and the commons.⁷²⁶

The Report discussed the various and unpredictable risks associated with AI due to its rapid expansion,⁷²⁷ but stated that “[d]espite the variation, the results did reveal concerns about AI harms over the coming year, highlighting a sense of urgency among experts to address risks across multiple areas and vulnerabilities in the near future.”⁷²⁸ In this respect, the Report suggested that managing risks requires more than merely listing or ranking them, advocating for a vulnerability-based approach, which shifts the focus from identifying each specific risk to understanding who is most exposed, where these risks could manifest, and who should be held accountable.⁷²⁹ The Report recommended that focusing on identifying vulnerabilities in those most exposed to the risks of AI serves as a foundation for more adaptive and responsive risk management, further suggesting an approach to categorizing AI-related risks based on existing or potential vulnerabilities, particularly in areas closely aligned with human rights.⁷³⁰ The Advisory Body set out guiding principles including that “AI governance should be anchored in the Charter of the United Nations, international human rights law, and other agreed international commitments such as the SDGs.”⁷³¹

(16) Developing human rights-anchored regulatory frameworks for AI development, use, and application is critical to preventing threats to the human rights of future generations.⁷³² Both the Committee on Economic, Social and Cultural Rights and the AI Advisory Body have underscored the vital importance of international cooperation in this sphere. The Committee has called for enhanced international cooperation “as these technologies need global regulations in order to be effectively managed.”⁷³³ It further warned that “[f]ragmented national responses to these transnational technologies would create governance gaps detrimental to the enjoyment of economic, social and cultural rights and would perpetuate technological divides and economic disparities.”⁷³⁴ The AI Advisory Body also noted that a global approach to governing AI requires a “common understanding of its capabilities, opportunities, risks and uncertainties” and called for global cooperation and coordination to “avert regulatory races to the bottom while reducing regulatory friction across borders; to maximize learning and technical interoperability; and to

725. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶ 73.

726. *Final Report: Governing AI for Humanity*, U.N. Secretary-General’s AI Advisory Body, ¶ 20 (Sept. 2024), https://www.un.org/sites/un2.un.org/files/governing_ai_for_humanity_final_report_en.pdf.

727. *Id.* ¶¶ 17–25.

728. *Id.* ¶ 24.

729. *Id.* ¶ 26.

730. *Id.* ¶¶ 27–30.

731. *Id.* ¶ 47 (guid. princ. 5).

732. See Commentary, Princ. 9.

733. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶ 74.

734. *Id.* ¶¶ 74. See also *id.* ¶¶ 77–84.

respond effectively to challenges arising from the transboundary character of AI.⁷³⁵ A particular challenge identified by the Advisory Body is the rapid advancement of AI technology, along with its “general-purpose nature,” which “tests humanity’s ability to respond in time.”⁷³⁶ Specifically, the Report highlighted that multi-stakeholder engagement and international cooperation and assistance are necessary to ensure that “opportunities are fairly accessed and distributed, and the risks are not loaded onto the most vulnerable – or passed on to future generations, as we have seen tragically with climate change.”⁷³⁷ In the 2024 Global Digital Compact, States recognized the urgent need to “inclusively assess and address the potential impact, opportunities and risks of artificial intelligence systems on sustainable development and the well-being and rights of individuals.”⁷³⁸ They further committed to advancing “equitable and inclusive approaches to harnessing artificial intelligence benefits and mitigating risks in full respect of international law, including international human rights law, and taking into account other relevant frameworks such as the Recommendation on the Ethics of Artificial Intelligence of the United Nations Educational, Scientific and Cultural Organization.”⁷³⁹

(17) The adoption of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law (Framework Convention on Artificial Intelligence) represents a significant early treaty aimed at ensuring that all activities within the lifecycle of AI systems respect human rights.⁷⁴⁰ This Framework Convention sets forth “general common principles” that each Party is required to implement with regard to AI systems “in a manner appropriate to its domestic legal system and the other obligations of this Convention.”⁷⁴¹ These principles include human dignity and individual autonomy,⁷⁴² transparency and oversight,⁷⁴³ accountability and responsibility,⁷⁴⁴ equality and non-discrimination,⁷⁴⁵ privacy and personal data protection,⁷⁴⁶ reliability,⁷⁴⁷ and safe innovation.⁷⁴⁸ In addition, the Framework Convention requires State Parties to adopt or maintain measures to ensure the availability of accessible and effective remedies for human rights violations resulting from the activities within the lifecycle of AI systems.⁷⁴⁹ It also includes an obligation on Parties to “adopt or maintain measures for the identification, assessment, prevention and mitigation of risks posed by artificial intelligence systems by considering actual and potential impacts to human rights, democracy and the rule of law.”⁷⁵⁰ Although the Framework Convention does not refer explicitly to the rights of future generations, the fact that the obligations are intended to apply to activities over the

735. *Final Report: Governing AI for Humanity*, U.N. Secretary-General’s AI Advisory Body, ¶ xxvii (2024).

736. *Id.* ¶ 31.

737. *Id.* ¶¶ lxx, 218.

738. 2024 Global Digital Compact, *supra* note 724, ¶ 51.

739. *Id.* ¶ 52.

740. Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy, and the Rule of Law, *adopted* Sept. 5, 2024, Council of Eur., C.E.T.S. No. 225 [hereinafter Council of Eur. Framework Convention on Artificial Intelligence].

741. *Id.* art. 6.

742. *Id.* art. 7.

743. *Id.* art. 8.

744. *Id.* art. 9.

745. *Id.* art. 10.

746. *Id.* art. 11.

747. *Id.* art. 12.

748. *Id.* art. 13.

749. *Id.* art. 14.

750. *Id.* art. 16(1).

lifecycle of AI systems—many of which will operate into the future—necessarily implies an obligation to assess, prevent and mitigate the reasonably foreseeable impacts of these systems on the human rights of future generations. These developments underscore the importance of international cooperation in identifying the risks posed by AI systems to the human rights of both present and future generations and in developing effective, human-rights-based regulatory, monitoring, and accountability systems as part of the obligation to respect human rights.

(18) Principle 17 (n) deals with the development or use of weaponry that threatens the right to life or other human rights, including the human right to a clean, healthy, and sustainable environment for future generations. International law strictly prohibits the use of weapons of mass destruction that pose an existential risk to human life or an environment that is conducive to human life.⁷⁵¹ States have a duty to respect the rights of future generations by refraining from the development, use, or facilitation of such weapons,⁷⁵² which include, but are not limited to, nuclear and biological weapons of mass destruction.⁷⁵³ States must also refrain from assisting or enabling non-State actors from developing, testing, producing, manufacturing, acquiring, possessing, transporting, transferring, or using such weapons.⁷⁵⁴

(19) In terms of Principle 17 (o), a State would violate the human rights of future generations by producing or facilitating the production of any waste material or hazardous substances of a kind or at a scale that cannot be soundly managed, and safely and completely disposed of by the generation that produced it. The failure of States to uphold their obligation to respect in this regard would result in off-loading the burdens and risks of waste materials and hazardous substances on future generations. Several international and regional treaties seek to prevent and mitigate pollution caused by waste material and hazardous substances and to control the transboundary movement and disposal of hazardous wastes.⁷⁵⁵ The African Court on Human and

751. See, e.g., Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, *opened for signature* Aug. 5, 1963, 480 U.N.T.S. 43 (*entered into force* Oct. 10, 1963).

752. See, e.g., Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, *adopted* June 17, 1925, 94 U.N.T.S. 65 (*entered into force* May 9, 1926); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction, *adopted* Apr. 10, 1972, 1015 U.N.T.S. 163 (*entered into force* Mar. 26, 1975) [hereinafter Biological Weapons Convention]; Cartagena Protocol on Biosafety to the Convention on Biological Diversity art. 16(1), *adopted* Jan. 29, 2000, 226 U.N.T.S. 208 (*entered into force* Sept. 11, 2003) [hereinafter Cartagena Protocol on Biosafety].

753. Treaty on the Prohibition of Nuclear Weapons, *supra* note 106, art. 1; Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean art. 1, *opened for signature* Feb. 14, 1967, 634 U.N.T.S. 281 (*entered into force* Apr. 22, 1968); South Pacific Nuclear Free Zone Treaty art. 3, *adopted* Aug. 6, 1985, 1445 U.N.T.S. 177 (*entered into force* Dec. 11, 1986); Treaty on the Southeast Asia Nuclear Weapon-Free Zone art. 3, *opened for signature* Dec. 15, 1995, 1981 U.N.T.S. 130 (*entered into force* Mar. 27, 1997); African Nuclear Weapon-Free-Zone Treaty art. 3, *opened for signature* Apr. 11, 1996, 35 I.L.M. 698 (*entered into force* July 15, 2009); Treaty on a Nuclear Weapon-Free-Zone in Central Asia art. 3, *opened for signature* Sept. 8, 2006, 2970 U.N.T.S. 91 (*entered into force* Mar. 21, 2009).

754. International Convention for the Suppression of Acts of Nuclear Terrorism art. 2, *opened for signature* Apr. 13, 2005, 2445 U.N.T.S. 89 (*entered into force* July 7, 2007); Treaty on the Non-Proliferation of Nuclear Weapons arts. V–VI, *opened for signature* Jul. 1, 1968, 729 U.N.T.S. 161 (*entered into force* Mar. 5, 1970); Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J., at 263, ¶¶ 98–100; U.N. S.C. Res. 1540, ¶ 1 (Apr. 28, 2004); Biological Weapons Convention, *supra* note 752, art. 3; 4th Rev. Conf. of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction, Final Doc., Nov. 25 – Dec. 6, 1996, at 17, U.N. Doc. BWC/Conf.IV/9 (1996).

755. See, e.g., Convention on the Law of the Sea, *supra* note 493, art. 3; Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, *adopted* Nov. 7, 1996, 36 I.L.M. 1;

Peoples' Rights (African Court) found that Côte d'Ivoire violated several rights in the African Charter⁷⁵⁶ due to its failure to prevent, mitigate (e.g., through decontamination measures), and ensure access to effective remedies in response to the importation and dumping of toxic chemical waste into its territory, which led to at least seventeen deaths and contaminating more than 100,000 persons.⁷⁵⁷ In this regard, the African Court relied extensively on Côte d'Ivoire's obligations under the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, as well as the Algiers Convention on the Conservation of Nature and Natural Resources.⁷⁵⁸ The threats posed by waste materials and hazardous substances have been extensively documented by the Special Rapporteur on toxics and human rights, Marcos Orellana.⁷⁵⁹ The Special Rapporteur's report on good practices made the following observation:

The best protection of the enjoyment of human rights against the impact of toxics is through prevention of exposure. For example, preventing exposure protects the rights to life, to health, to physical integrity, to dignity and to equality, and averts the difficulty of securing the right of victims to an effective remedy for harm that appears years or decades after exposure. Good practices for the prevention of exposure are already well known. In the hierarchy of hazard controls, or "inherently safer design", the best practice is the elimination of hazards. This is followed by risk mitigation options such as substitution with less hazardous substances and materials, engineering controls, administrative controls, and the use of personal protective equipment, in order of most to least effective. Elimination and substitution of hazardous substances is necessary to protect human rights throughout the life cycle of industrial products and processes, to reduce hazardous waste generation, and to enable the best transition to a healthy circular economy. Paying greater attention to elimination and substitution would contribute significantly to alleviating the disproportionate impacts on vulnerable groups.⁷⁶⁰

By applying these good practices, States would avoid off-loading unmanageable burdens of waste and hazardous substances onto future generations, thereby ensuring respect for their human rights.

(20) Principle 17 (p) refers to the development or use of reproductive technologies that threaten or violate the capacity of future generations to enjoy human rights, including but not limited to the rights to privacy, health and safety, and bodily integrity. This Principle requires States to refrain from conduct in the development and application of reproductive technologies that could threaten or undermine the human rights of future generations. The Oviedo Convention on Human Rights and Biomedicine affirms in its preamble that "progress in biology and medicine

Bamako Convention, *supra* note 452; Basel Convention, *supra* 687; Spent Fuel and Radioactive Waste Safety Convention, *supra* note 103; Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, *adopted* Sept. 10, 1998, 2244 U.N.T.S. 337 (*entered into force* Feb. 24, 2004); Stockholm Convention on Persistent Organic Pollutants, *opened for signature* May 22, 2001, 2256 U.N.T.S. 119 (*entered into force* May 17, 2004).

756. LIDHO v. Côte d'Ivoire, App. No. 041/2016, Afr. Ct. H.P.R., ¶¶ 123–200 (2023) (the violations found were to the rights in the African Charter, *supra* note 144, to life (*id.* art. 4), the right to an effective remedy (*id.* art. 7(1)(a) read with art. 1), the best attainable state of physical and mental health (*id.* art. 16), and the right to a general satisfactory environment conducive to development (*id.* art. 24)).

757. *Id.* ¶¶ 4, 11, 96, 141, 183.

758. *Id.* ¶¶ 130–44, 182 (see Algiers Convention on the Conservation of Nature and Natural Resources, Sept. 15, 1968, 1001 U.N.T.S. 3).

759. *Report of the Special Rapporteur on Toxics and Human Rights, Twenty-Fifth Anniversary of the Creation of the Mandate, Marcos Orellana*, U.N. GAOR, 75th Sess., Agenda Item 72(b), U.N. Doc. A/75/290 (2020); *Report of the Special Rapporteur on Toxics and Human Rights, Guidelines for Good Practices, Baskut Tuncak*, U.N. GAOR, 36th Sess., Agenda Item 3, U.N. Doc. A/HRC/36/41 (2017).

760. Special Rapporteur on Toxics and Human Rights, *Guidelines for Good Practices*, ¶¶ 46–47 U.N. Doc. A/HRC/36/41 (2017) (citations omitted).

should be used for the benefit of present and future generations.”⁷⁶¹ Article 2 of the Convention stipulates that “[t]he interests and welfare of the human being shall prevail over the sole interest of society or science.”⁷⁶² The Convention further prohibits any form of discrimination against persons on the ground of their “genetic heritage”⁷⁶³ and restricts predictive genetic tests to purposes of health or for scientific research linked to health purposes, such as identifying genetic diseases, and requires that they be accompanied by appropriate genetic counseling.⁷⁶⁴ Interventions seeking to modify the human genome “may only be undertaken for preventive, diagnostic or therapeutic purposes” and are not permitted if their aim is “to introduce any modification in the genome of any descendants.”⁷⁶⁵

(21) The UNESCO Declaration on Future Generations requires safeguarding the human genome and biodiversity, emphasizing that this must be done with “full respect of the human person and human rights.”⁷⁶⁶ It further asserts that “[s]cientific and technological progress should not in any way impair or compromise the preservation of the human and other species.”⁷⁶⁷ These standards are also developed in the Universal Declaration on the Human Genome and Human Rights,⁷⁶⁸ which declares that the “human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity.”⁷⁶⁹ The Declaration goes on to affirm:

Everyone has a right to respect for their dignity and for their rights regardless of their genetic characteristics. That dignity makes it imperative not to reduce individuals to their genetic characteristics and to respect their uniqueness and diversity.⁷⁷⁰

The long-term impact of developments in life sciences on future generations and their genetic constitution is recognized in the UNESCO Declaration on Bioethics and Human Rights.⁷⁷¹ In this context, the Charter of Fundamental Rights of the European Union also prohibits “eugenic practices, in particular those aiming at the selection of persons” as well as “the reproductive cloning of human beings” under the right to the integrity of the human person.⁷⁷² Further, the Committee on Economic, Social and Cultural Rights has held:

States parties should prevent the use of scientific and technological progress for purposes contrary to human rights and dignity, including the rights to life, health and privacy, e.g. by excluding inventions from patentability whenever their commercialization would jeopardize the full realization of these rights. States parties should, in particular, consider to what extent the patenting of the human body and

761. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Oviedo Convention on Human Rights and Biomedicine, Council of Eur., Apr. 4, 1997, C.E.T.S. No. 164 [hereinafter Oviedo Convention on Human Rights and Biomedicine] (currently the only legally binding international treaty on the protection of human rights in the biomedical field).

762. *Id.* art. 2.

763. *Id.* art. 11.

764. *Id.* art. 12.

765. *Id.* art. 13.

766. UNESCO Declaration on Future Generations, *supra* note 88, art. 6.

767. *Id.*

768. Universal Declaration on the Human Genome and Human Rights, UNESCO, 26th plen. mtg., C/Res/16 (Nov. 11, 1997) [hereinafter UNESCO Declaration on the Human Genome and Human Rights].

769. *Id.* art. 1.

770. *Id.* art. 2(a), (b).

771. Universal Declaration on Bioethics and Human Rights art. 16, UNESCO, 18th plen. mtg., C/Res/24 (Oct. 19, 2005) [hereinafter UNESCO Declaration on Bioethics and Human Rights].

772. EU Fundamental Rights Charter, *supra* note 212, art. 3.

its parts would affect their obligations under the Covenant or under other international human rights instruments.⁷⁷³

It is also vital in this context that the development and use of reproductive technologies respect the principles of free, informed and prior consent,⁷⁷⁴ and the dignity and rights of persons living with disabilities.⁷⁷⁵ Moreover, the development and use of reproductive technologies should not detract from full and non-discriminatory access to the full range of sexual and reproductive health rights.⁷⁷⁶

(22) In terms of Principle 17 (q), the unjustifiable reduction of expenditure on programs and institutions required to realize human rights, thereby placing future generations at risk of diminished enjoyment of their rights, violates a State's duty to respect the human rights of future generations. Such reductions would constitute a retrogressive measure that is prima facie inconsistent with a State's human rights obligations.⁷⁷⁷ The Committee on Economic, Social and Cultural Rights has held that such measures must be necessary, proportionate, and temporary, and measures must be adopted to mitigate inequalities caused by such measures. In this regard, States must ensure that such measures do not disproportionately affect marginalized and disadvantaged groups.⁷⁷⁸ The Independent Expert on foreign debt and human rights, Juan Bohoslavsky, has emphasized that:

Human rights impact assessments should form a regular part of decision-making processes with respect to economic reform policies or loan conditionality, and should be carried out at regular intervals. They should be carried out both ex ante – to assess the foreseeable impacts of proposed policy changes – and ex post – that is, looking back to assess the actual impacts of policy change and implementation, in order to address such impacts.⁷⁷⁹

The human rights impact assessments should incorporate all economic policy and budgetary measures that have a foreseeable impact on the human rights of future generations. In particular, States should embark on long-term planning to ensure the maintenance of the programs and institutions essential for guaranteeing the human rights of future generations. These include those

773. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 17*, supra note 534, ¶ 35 (citations omitted).

774. E.g., Comm. on Elim. Discrim. Against Women, *General Recommendation No. 24*, supra note 204, ¶ 22; Communication No. 22/2017 (G.P. v. It.), adopted Feb. 18 – Mar. 8, 2019, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 65th Sess., ¶ 16, U.N. Doc. E/C.12/65/D/22/2017 (2019).

775. Comm. on Rts. People with Disabilities, *General Comment No. 6*, supra note 278, ¶ 66.

776. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 22*, supra note 204; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, supra note 39, ¶ 33.

777. ICESCR, supra note 14, art. 9; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 19*, supra note 65, ¶ 42. See also *General Comment No. 3: The Nature of States Parties' Obligations*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 5th Sess., ¶ 10, U.N. Doc. E/1991/23 (1990). See Commentary, Princ. 3, ¶ 2.

778. Chairperson Ariranga G. Pillay, *Letter Dated 16 May 2012 Addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States Parties to the International Covenant on Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., ¶¶ 3, 7, U.N. Doc. CESCR/48th/SP/MAB/SW (2012); *Statement on Public Debt, Austerity Measures and the ICESCR*, ¶ 2, U.N. Doc. E/C.12/2016/1 (2016); Communication No. 5 (Bellili v. Spain), adopted May 29 – June 23, 2017, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 61st Sess., ¶¶ 17.4–6., U.N. Doc. E/C.12/61/D/5/2015 (2017). See also Comm. on Rts. Child, *General Comment No. 19*, supra note 65, ¶ 31; Nairobi Principles and Guidelines on ESCRs in the African Charter, supra note 656, ¶ 20. See also Sandra Liebenberg, *Austerity in the Midst of a Pandemic: Pursuing Accountability through the Socio-Economic Rights Doctrine of Non-retrogression*, 37 S. Afr. J. on Hum. Rts. 181–204 (2021).

779. *Report of the Independent Expert on Foreign Debt and Human Rights, Guiding Principles on Human Rights Impact Assessments of Economic Reforms*, Juan P. Bohoslavsky, U.N. H.R.C., 40th Sess., Agenda Item 3, princ. 18, U.N. Doc. A/HRC/40/57 (Dec. 19, 2018) [hereinafter Guiding Principles on HRIAs of Economic Reforms].

programs and institutions that secure access to justice and a remedy when human rights are violated.

18. *Obligation to Protect the Human Rights of Future Generations*

- a) *States must take all necessary measures to protect the human rights of future generations against substantial risks posed by the conduct of public and private actors, including business enterprises.*
- b) *States have a continuing obligation to reasonably foresee and prevent the creation of circumstances likely to result in the violations of the human rights of future generations.*
- c) *Necessary measures include, but are not limited to:*
 - i. *Adopting and implementing appropriate legislative and administrative measures as well as establishing procedures, institutions and mechanisms so as to identify and effectively prevent national and international threats to the human rights of future generations;*
 - ii. *Establishing special mechanisms, processes or institutions to monitor and report on the extent to which public bodies are setting and meeting their human rights obligations toward future generations;*
 - iii. *Ensuring effective and accessible judicial and other remedies for violations of the human rights of future generations in accordance with Part V.*

Commentary

(1) Principle 18 (a) reflects the general obligation to protect the human rights of future generations against substantial risks posed by both public and private actors. This obligation exists for both CPRs⁷⁸⁰ and ESCRs,⁷⁸¹ and has been recognized in international and regional instruments.⁷⁸² As the African Commission has explained, “protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms.”⁷⁸³ This obligation arises when the acts of private actors, including business enterprises, may lead to human rights violations, either through direct interference or by contributing to conditions that pose a risk to the fulfillment of human rights in the present or future.

780. Hum. Rts. Comm., *General Comment No. 31*, *supra* note 653, ¶ 8; *General Comment No. 35: Liberty and Security of the Person*, U.N. GAOR, Hum. Rts. Comm., 112th Sess., ¶ 7, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014); Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 18; Hum. Rts. Comm., *General Comment No. 37*, *supra* note 721, ¶¶ 24–25; *General comment No. 2: Implementation of Article 2 by States Parties*, U.N. GAOR, Comm. Against Torture, ¶ 18, U.N. Doc. CAT/C/GC/2 (Jan. 28, 2008); *General Comment No. 4: Implementation of Article 3 of the Convention in the Context of Article 22*, U.N. GAOR, Comm. Against Torture, ¶ 30, U.N. Doc. CAT/C/GC/4 (Sept. 4, 2018).

781. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 12*, *supra* note 39, ¶ 15; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20*, *supra* note 260, ¶ 11; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 15–17, 31–34; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 26–31; *General Comment No. 3: Women and Girls with Disabilities*, U.N. GAOR, Comm. on Rts. People with Disabilities, ¶ 18, U.N. Doc. CRPD/C/GC/3 (Nov. 25, 2016); Comm. on Elim. Discrim. Against Women, *General Recommendation No. 35*, *supra* note 206, ¶ 24(b).

782. See, e.g., *Webster v. U.K.*, App. Nos. 7601/76 & 7806/77, 1981 Eur. Comm’n H.R. (ser. A) No. 44, ¶ 49; *X & Y v. Neth.*, App. No. 8978/80, Eur. Comm’n H.R. (ser. A) No. 91, ¶ 27 (1985); *M.F.H.R. v. Greece*, Eur. Comm. of Social Rights, Eur. Consult. Ass., Doc. No. 1 (Apr. 4, 2005); *SERAC v. Nigeria*, Afr. Comm’n H.P.R., ¶ 46 (2001); *Velásquez-Rodríguez v. Hond.*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (1988).

783. *SERAC v. Nigeria*, Afr. Comm’n H.P.R., ¶ 46 (2001).

(2) The scope of protection outlined in Principle 18 (a) involves taking steps to prevent climate change and its adverse impacts, including “significant deleterious effects” on human health and welfare.⁷⁸⁴ As Asbjørn Eide first put it, this type of obligation “requires active protection against other, more assertive or aggressive subjects – more powerful economic interests, such as protection against fraud, against unethical behaviour in trade and contractual relations, against the marketing and dumping of hazardous or dangerous products.”⁷⁸⁵ These steps also entail protection against “threats emanating from private persons and entities,”⁷⁸⁶ including business entities such as multinational corporations operating within the jurisdiction or control of the State. This is particularly important in the face of environmental crises and structural forms of harm and disenfranchisement, the drivers of which are closely related to corporate conduct. States’ preventive measures must be capable of ensuring, to the fullest extent possible, that threats to future generations’ rights do not materialize.⁷⁸⁷

(3) Principle 18 (b) emphasizes the continuing nature of the obligation to protect future generations. It requires States to reasonably foresee and prevent circumstances likely to result in human rights violations for future generations. This obligation is generally understood as one of due diligence. Importantly, this obligation is not merely procedural but entails a substantive obligation to respond to human rights threats. As the Inter-American Court of Human Rights stated in *Velásquez-Rodríguez v. Honduras*:

[I]n principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the *lack of due diligence* to prevent the violation or to respond to it as required by the Convention.⁷⁸⁸

In line with this reasoning, the obligation to protect the rights of future generations involves adopting all necessary and appropriate measures to protect them from harm caused by third parties, including non-State actors such as business entities.⁷⁸⁹

(4) As part of their responsibility to respect human rights, business entities must operate with human rights due diligence, which includes assessing real or potential substantial⁷⁹⁰ human rights impacts and taking measures to mitigate and remedy them.⁷⁹¹ As such, businesses must respect

784. UNFCCC, *supra* note 98, art. 1(1).

785. See *Report of the Special Rapporteur on the Right to Adequate Food as a Human Right, Right to Adequate Food and to be Free From Hunger: Updated Study on the Right to Food*, Asbjørn Eide, U.N. ESCOR, Comm’n on Hum. Rts. Sub-Comm’n on Prevention of Discrim. & Prot. of Minorities, 51st Sess., Agenda Item 4, ¶¶ 51–57, U.N. Doc. E/CN.4/Sub.2/1999/12 (June 28, 1999); Asbjørn Eide, *Universalisation of Human Rights Versus Globalisation of Economic Power*, in *RENDERING JUSTICE TO THE VULNERABLE: LIBER AMICORUM IN HONOUR OF THEO VAN BOVEN* 99–120, 110–11 (Fons Coomans et al. eds., 2000).

786. Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 18.

787. See DE SCHUTTER, *INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 34, at 436.

788. *Velásquez-Rodríguez v. Hond.*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (1988).

789. See Commentary, Princ. 31.

790. See Commentary, Princ. 29, ¶ 5 (on the meaning of a “substantial” risk).

791. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, princ. 17–21, H.R.C. Res. 17/31, U.N. H.R.C. 17th Sess., Agenda Item 3, annex, U.N. Doc. A/HRC/17/31 (2011) [hereinafter UNGPBHR]. See also, Comm. on Econ., Soc. & Cult. Rts., *General*

the rights of future generations by assessing the potential impacts of their activities and taking measures to mitigate and remedy them, especially with regard to their contributions to climate change.⁷⁹² States have an obligation to adopt regulatory frameworks requiring such human rights due diligence from businesses:

The obligation [of States] to protect entails a positive duty to adopt a legal framework requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of Covenant rights, to avoid such rights being abused, and to account for the negative impacts caused or contributed to by their decisions and operations and those of entities they control on the enjoyment of Covenant rights. States should adopt measures such as imposing due diligence requirements to prevent abuses of Covenant rights in a business entity's supply chain and by subcontractors, suppliers, franchisees, or other business partners.⁷⁹³

Furthermore, such legal frameworks must require that the impact assessment of business entities take account of possible impacts on Indigenous Peoples, such as their rights to land, resources, territories, cultural heritage, and traditional knowledge,⁷⁹⁴ including risks to future generations.⁷⁹⁵

(5) The obligations of Principles 18 (a) and (b) are made concrete with a non-exhaustive list of examples in Principle 18 (c). Together, these examples illustrate the operation of the principles of prevention and precaution, articulated in Principle 9,⁷⁹⁶ in the context of the obligation to protect the human rights of future generations. States cannot delay taking necessary measures to regulate activities that pose risks to future generations on grounds of scientific uncertainty. Where the best available science indicates time-sensitive measures are needed to minimize risks of severe or irreversible damage, failure to act promptly would violate the obligation to protect.⁷⁹⁷

(6) The obligation to protect includes creating broader conditions that minimize risks to future generations. The Human Rights Committee has established that “the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”⁷⁹⁸ The Committee further noted that some of the most serious and urgent threats to the ability of present and future generations to enjoy their right to life stem from

Comment No. 24, supra note 284, ¶¶ 15–17, 31–34; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 35, supra* note 206, ¶ 24(b).

792. Some domestic courts and national human rights institutions (NHRIs) have already examined business standards of human rights due diligence in the context of climate change and the rights of future generations. See, e.g., *Vereniging Milieudéfensie v. Royal Dutch Shell PLC*, Hague Dist. Ct., Case No. C/09/571932, ¶ 4.4.54 (Neth.); Comm'n on Hum. Rts. of the Phil., *National Inquiry on Climate Change Report* (2022), <https://chr.gov.ph/wp-content/uploads/2022/05/CHRP-NICC-Report-2022.pdf>.

793. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24, supra* note 284, ¶ 16; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26, supra* note 187, ¶ 30.

794. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26, supra* note 187, ¶ 17.

795. The ability to transmit land and cultural heritage to future generations as an Indigenous rights issue has been captured by human rights doctrine in *Mayagna (Sumo) Awas Tingni Community v. Nicar.*, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 149 (2001); *Endorois v. Kenya*, Afr. Comm'n H.P.R., ¶ 157 (2009); Communication No. 3624/2019 (*Billy v. Austl.*), U.N. GAOR, Hum. Rts. Comm., 135th Sess., ¶ 8.14, U.N. Doc. CCPR/C/135/D/3624/2019 (Sept. 22, 2022).

796. See Commentary, Princ. 9.

797. Some domestic courts have ruled that the precautionary principle and principle of intergenerational equity are essential to protecting the freedoms and rights of future generations. E.g., *Neubauer v. Germ.*, *supra* note 22, ¶ 266; *Urgenda v. Neth.* 2015, *supra* note 122, ¶ 4.57; *Future Generations v. Colom. Min. of Env't*, *supra* note 22, ¶ 11.2.

798. Hum. Rts. Comm., *General Comment No. 36, supra* note 62, ¶ 26.

environmental harm, climate change, and unsustainable development practices.⁷⁹⁹ As a result, State obligations under the ICCPR include taking measures to protect the environment against pollution and climate change “caused by public and private actors.”⁸⁰⁰ Similarly, in their Joint Statement on Human Rights and Climate Change, five human rights treaty bodies declared that States’ human rights obligations involve taking measures to “prevent foreseeable harm to human rights caused by climate change,”⁸⁰¹ which includes regulating private actors.⁸⁰²

(7) As stated in Principle 18 (c), the obligation to protect requires that States adopt legislative, administrative, educational, and other appropriate measures to ensure the effective protection of future generations’ rights that may be affected by national and international threats.⁸⁰³ In light of the prevention and precautionary principles, these measures involve establishing procedures and mechanisms, nationally and internationally, to identify and avert threats to the rights of future generations. Amongst other obligations, State institutions must assess the potential human rights impact of current actions on future generations and enforce due diligence requirements on businesses through legislation. For example, Wales’s Well-being of Future Generations Act establishes various national mechanisms, such as a Commissioner for Future Generations to monitor the extent to which public bodies comply with their commitments toward future generations.⁸⁰⁴ While international human rights law gives States flexibility in how to implement their obligations at the domestic level, human rights norms require appropriate mechanisms for redress and remediation,⁸⁰⁵ and government accountability measures must exist within the domestic legal order.⁸⁰⁶ In this context, taking appropriate measures may include enacting domestic legislation or international treaties that impose liabilities on States and non-State actors, and enabling victims or their representatives to seek administrative or judicial remedies against domestic or transnational businesses for their contributions to human rights harms, including those of future generations.⁸⁰⁷

(8) State obligations to protect arise where a State exercises effective control over the source of foreseeable harm, such as greenhouse gas emissions, even if the impact of such harm is of a

799. *Id.* ¶ 62. The Committee recalled this statement in the landmark ruling in *Billy v. Austl.*, Hum. Rts. Comm., ¶ 8.3 (2022). It has also been further recognized in H.R.C. Res. 48/13, *Human Right to a Clean, Healthy and Sustainable Environment*, ¶ 10 (2021); G.A. Res. 76/300, *Human Right to a Clean, Healthy and Sustainable Environment*, ¶ 12 (2022).

800. Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 62.

801. *Joint Statement on Human Rights and Climate Change*, ¶ 10, U.N. Doc. HRI/2019/1 (2020) (affirmed in *Sacchi v. Arg.*, *supra* note 352, ¶ 10.6).

802. *Joint Statement on Human Rights and Climate Change*, ¶ 12, U.N. Doc. HRI/2019/1 (2020).

803. See Commentary, Princ. 28. For State obligations to adopt measures to protect from third parties, see Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 24; Comm. on Rts. Child, *General Comment No. 16*, *supra* note 75, ¶ 128.

804. Well-being of Future Generations (Wales) Act 2015, c. 2 (U.K.).

805. See Commentary, Princ. 30.

806. *General Comment No. 9: Domestic Application of the Covenant*, U.N. ESCOR, Comm. on Econ., Soc., & Cult. Rts., 19th Sess., ¶ 8, U.N. Doc., E/C.12/1998/24 (Dec. 3, 1998). For the relationship between the obligation to protect under international human rights law and effective remedies, see Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 8; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 15–17, 31–34.

807. These are some of the main recommendations in Comm’n on Hum. Rts. of the Phil., *National Inquiry on Climate Change Report*, at 115–60 (2022).

transboundary nature.⁸⁰⁸ In a similar vein, obligations to protect the rights of future generations arise by virtue of a State's effective control over the sources of foreseeable harm to future generations, irrespective of future generations' location.⁸⁰⁹ A State is responsible for infringements on future generations' rights caused or contributed to by private actors "where it has failed to undertake appropriate and reasonable measures to prevent and remedy such infringements or otherwise collaborated with or tolerated the infringements."⁸¹⁰

19. *Violations of the Obligation to Protect*

Violations of obligations to protect the human rights of future generations by States include, but are not limited to:

- a) *The failure to adequately monitor and regulate the conduct of public or non-State actors where it is reasonably foreseeable that such conduct will impair future generations' human rights, or failing to hold them accountable for such conduct;*
- b) *The failure by States to phase out fossil fuels within the shortest possible time, with states with the greatest responsibility and capacity moving most expeditiously;*
- c) *The failure to avert, minimize and address loss and damage associated with the adverse effects of climate change; including the failure of States with greater responsibility and capability to adequately contribute financially and through all appropriate policies and measures;*
- d) *The failure to take steps to protect future generations from biological risks and threats;*
- e) *The failure to prevent the degradation or destruction of irreplaceable topsoils and freshwater vital to sustaining the lives and livelihoods of future generations;*
- f) *The failure to effectively regulate, and where appropriate prohibit, scientific research and activities that pose a reasonably foreseeable and substantial risk to the human rights of future generations, including genetic engineering and geo-engineering;*
- g) *The failure to adopt effective measures to protect State and international decision-making processes from undue corporate influence or corporate capture which nullifies or impairs the human rights of future generations;*
- h) *The failure to prevent the monopolization of access to knowledge and abusive corporate control of data required for the realization of the human rights of future generations;*
- i) *The failure to adopt legislation, programs, and policies to protect the right to work and rights in work in the context of technological innovations that pose a substantial and reasonably foreseeable risk to the full enjoyment of these rights by future generations;*
- j) *The failure to protect Indigenous Peoples, peasants and traditional communities' rights and prevent the appropriation of their systems of knowledge by State and non-State actors;*
- k) *The failure to investigate and provide appropriate remedies for human rights abuses by non-State actors, including prosecution where appropriate, and reparation.*

808. For extraterritorial obligations in the context of climate change, see *Sacchi v. Arg.*, *supra* note 352, ¶ 10.7; Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., ¶ 78–83. See Commentary, Princ. 24.

809. For the extraterritorial nature of the obligation to protect, see *Maastricht Principles on ETOs*, *supra* note 1, cmt. at 1133–45; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 30–35; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 35*, *supra* note 206, ¶ 24(b); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 41–45.

810. Comm. on Rts. Child, *General Comment No. 16*, *supra* note 75, ¶ 128.

Commentary

(1) Principle 19 provides examples of violations of the obligation to protect the rights of future generations. Each of the examples mirrors the substantive content of the obligation itself, which, if not complied with, results in a violation.

(2) Example 19 (a) reflects the obligation to regulate the conduct of public and non-State actors subject to a State's jurisdiction or control where such conduct is likely to have a significant impact on the environment or the enjoyment of future generations' rights. With respect to public actors, this obligation overlaps in part with the obligation to respect the rights of future generations. However, it merits separate articulation to emphasize the proactive steps a State needs to take to protect future generations' rights against violations resulting from acts and omissions attributable to it.⁸¹¹ Regarding private actors, the Committee on Economic, Social and Cultural Rights clarified in its General Comment 24 that:

Whereas States parties would not normally be held directly internationally responsible for a violation of economic, social and cultural rights caused by a private entity's conduct . . . a State party would be in breach of its obligations under the Covenant where the violation reveals a failure by the State to take reasonable measures that could have prevented the occurrence of the event. The responsibility of the State can be engaged in such circumstances even if other causes have also contributed to the occurrence of the violation, and even if the State had not foreseen that a violation would occur, provided such a violation was reasonably foreseeable.⁸¹²

Other human rights treaty bodies and regional courts have found that a State's failure to regulate private actors' conduct may violate their human rights protection obligations.⁸¹³ The State may be responsible for a violation regardless of whether the conduct of such private actors takes place territorially or extraterritorially.⁸¹⁴

(3) Example 19 (b) mirrors the obligation to future generations under international human rights law to mitigate climate change by reducing greenhouse gas emissions.⁸¹⁵ Failure to adopt sufficient mitigation efforts or to regulate activities contributing to climate change may constitute a human rights violation.⁸¹⁶ Five treaty bodies confirmed in their Joint Statement on Climate Change and Human Rights that "in their efforts to reduce emissions, States parties should contribute effectively to phasing out fossils fuels, promoting renewable energy and addressing emissions from the land sector, including by combating deforestation."⁸¹⁷ Several mandate holders of the UN Special Procedures issued a joint statement noting that fossil fuels are central

811. See, e.g., Hum. Rts. Comm., *General Comment No. 31*, *supra* note 653, ¶¶ 5–8, 13, 15.

812. *General Comment No. 24*, *supra* note 284, ¶ 31 (citations omitted). See Commentary, Princs. 18, 24.

813. See Commentary, Princ. 18, ¶ 1, Princ. 24(c).

814. E.g., *Sacchi v. Arg.*, *supra* note 352, ¶ 10.7; Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., ¶ 59; *Maastricht Principles on ETOs*, *supra* note 1, at 1133–45; Comm. on Econ., Soc., & Cult. Rts., *General comment No. 24*, *supra* note 284, ¶¶ 30–35; Comm. on Elim. Discrim. Against Women, *General recommendation No. 35*, *supra* note 206, ¶ 24(b); Comm. on Econ., Soc., & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 41–45.

815. Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 62; H.R.C. Res. 48/13, *Human Right to a Clean, Healthy and Sustainable Environment*, at 2 (2022).

816. E.g., *Joint Statement on Human Rights and Climate Change*, ¶ 10, U.N. Doc. HRI/2019/1 (2020); *Sacchi v. Arg.*, *supra* note 352, ¶ 10.6.

817. E.g., *Joint Statement on Human Rights and Climate Change*, ¶ 13, U.N. Doc. HRI/2019/1 (2020).

to the global existential and planetary crisis humanity currently faces.⁸¹⁸ The Special Rapporteur on toxics and human rights, Marcos Orellana, has further called on States to act immediately to decarbonize their national economies and adopt measures that protect marginalized groups from ongoing human rights impacts of fossil fuel production and “forever chemicals” by pursuing detoxification pathways.⁸¹⁹ Specifically, the Special Rapporteur recommended that wealthier States and the largest polluters immediately cease and divest from fossil fuel production.⁸²⁰ The 2024 Pact for the Future also includes the “transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner” and the “phasing out” of “fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible” as actions to address climate change.⁸²¹

(4) Example 19 (c) reflects that, with regard to climate change specifically, violations of the duty to protect future generations’ rights may occur as a result of a State’s failure to protect future generations’ rights against loss and damage. For instance, in *Billy v. Australia*, the Human Rights Committee declared that Australia had violated the ICCPR for failing to institute sufficient *adaptation* efforts to protect the petitioners and mandated the State to compensate the victims.⁸²² The 2024 UN Declaration on Future Generations further supports example 19 (c) and commits States to:

Prioritize urgent action to address critical environmental challenges and implement measures to reduce disaster risk and build resilience, reverse the degradation of ecosystems and ensure a clean, healthy and sustainable environment; and reaffirm the importance of accelerating action to address climate change and its adverse impacts, based on the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances, noting the importance for some of the concept of “climate justice.”⁸²³

Both examples 19 (b) and (c) show that States’ obligations in this sphere are informed by international climate change law, including the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC),⁸²⁴ and resulting obligations specific to developed countries.⁸²⁵ The Committee on Economic, Social and Cultural Rights has reiterated that “those countries that have historically contributed most to climate change and those countries that are currently the main contributors to it” have a human rights obligation to “assist the countries that are most affected by climate change but are hardly able to cope with its impacts, including by supporting and financing land-related adaptation measures.”⁸²⁶ The Committee has further stressed the importance of environmental and social safeguards to prevent human rights violations connected with mitigation and adaptation measures.⁸²⁷ Extending these

818. *Fossil Fuels at the Heart of Planetary Environmental Crisis: UN Experts*, U.N. OHCHR. (Nov. 3, 2023), <https://www.ohchr.org/en/press-releases/2023/11/fossils-fuels-heart-planetary-environmental-crisis-un-experts>.

819. Special Rapporteur on Toxics and Human Rights, *Toxic Impacts of Some Proposed Climate Change Solutions*, ¶¶ 1, 5, 6, 21, 70–79, 84–86, 91, 103, U.N. Doc. A/HRC/54/25 (2023).

820. *Id.* ¶¶ 13, 90, 97, 99, 104, 105(a), 106(e).

821. 2024 Pact for the Future, *supra* note 16, actn. 9, ¶ 28(c).

822. *Billy v. Austl.*, Hum. Rts. Comm., ¶¶ 10–11 (2022).

823. 2024 UN Declaration on Future Generations, *supra* note 8, commit. 18.

824. *E.g.*, UNFCCC, *supra* note 98, art. 3(1); Paris Agreement, *supra* note 99, art. 2(2).

825. *E.g.*, UNFCCC, *supra* note 98, art. 4; Paris Agreement, *supra* note 99, art. 9.

826. *General Comment No. 26*, *supra* note 187, ¶ 58.

827. *Id.*

safeguards to future generations is essential to prevent violations of the obligation to protect future generations' rights.

(5) Principle 19 (d) speaks to the failure of States to take adequate steps to protect future generations from biological risks and threats. The 2024 Pact for the Future reaffirms States' obligations to "[a]ddress emerging and evolving biological risks through improving processes to anticipate, prevent, coordinate and prepare for such risks, whether caused by natural, accidental or deliberate release of biological agents."⁸²⁸ Amongst others, the obligation of Principle 19 (d) further arises from Article 3 of the International Law Commission's Articles on Prevention of Transboundary Harm from Hazardous Activities, which directs the State of origin to "take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof."⁸²⁹ Article 6 of the UNESCO Declaration on Future Generations addresses this obligation in terms of biological risks by stipulating that the human genome and biodiversity "must be protected and safeguarded" for present and future generations.⁸³⁰ The UN Sendai Framework for Disaster Risk Reduction (Sendai Framework) also mandates that States prevent risks caused by "natural or man-made hazards, as well as related environmental, technological and biological hazards."⁸³¹ The Sendai Framework further guides the reduction and management of multi-hazard disaster risks associated with development, while promoting risk-informed and non-discriminatory participation in decision-making processes to protect human rights.⁸³² Several international treaties governing nuclear deployment further require that States prohibit, prevent, and refrain from engaging in any nuclear activities involving weapons of mass destruction in locations that present biological and environmental risks to humanity.⁸³³

(6) In line with Principle 19 (d), violations of the obligation to protect may also occur because of the failure to conduct impact assessments and institute regulatory frameworks to generate insight into the possible consequences for future generations of major projects or policies. In this regard, Article 5 (4) of the UNESCO Declaration on Future Generations stipulates that "present generations should take into account possible consequences for future generations of major projects before these are carried out."⁸³⁴ For example, a violation of this obligation will occur where no human rights impact assessment is conducted prior to the implementation of extractive activities within Indigenous communities' lands, with due account to possible impact on future generations' rights.⁸³⁵ The absence of legislation requiring such impact assessments or a lack of monitoring to ensure compliance with this requirement, also constitutes a violation of the obligation to protect future generations' rights.⁸³⁶

828. 2024 Pact for the Future, *supra* note 16, actn. 26, ¶ 47(c).

829. Int'l L. Comm'n Articles on Transboundary Harm, *supra* note 456, at 153–55.

830. UNESCO Declaration on Future Generations, *supra* note 88.

831. Sendai Framework for Disaster Risk Reduction, *supra* note 556, art. 15.

832. *Id.* arts. 15, 19(a)–(m).

833. Outer Space Treaty, *supra* note 447, art. I; Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and the Subsoil Thereof, pmbl. ¶ 1, art. 1, Feb. 11, 1971, 955 U.N.T.S. 115.

834. UNESCO Declaration on Future Generations, *supra* note 88.

835. See, e.g., Resolution on Extractive Industries and the Protection of Land Rights of Indigenous Populations/Communities in Africa, ACHPR/Res. 490 (LXIX) 2021, Afr. Comm'n H.P.R., ¶ 5 (Dec. 31, 2021); Comm. on Econ., Soc., & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 17.

836. See, e.g., Comm. on Econ., Soc., & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 17. See also Resolution on the Appointment of the Chairperson and Reconstitution of the Working Group on Extractive

(7) Principle 19 (e) addresses the degradation or destruction of irreplaceable topsoils and freshwater resources critical to sustaining the lives and livelihoods of future generations. The Committee on Economic, Social and Cultural Rights has clarified, in connection with the right to water, that violations to protect the right follow from a State's failure to adopt the "necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems."⁸³⁷ Principle 19 (e) is further supported by the Convention to Combat Desertification, which commits its Member States to "take appropriate action in combating desertification and mitigating the effects of drought for the benefit of present and future generations."⁸³⁸ Specifically, the Convention requires preventive and rehabilitative actions, as well as conservation efforts for the sustainable management and protection of scarce water resources and highly erodible topsoils.⁸³⁹ The Convention further mandates that States adopt an integrated approach that addresses not only the environmental but also the socio-economic dimensions of desertification and water scarcity, promoting international cooperation and ensuring sustainable development.⁸⁴⁰

(8) Principle 19 (f) refers to the failure to effectively regulate, and where necessary, prohibit scientific research and activities that pose reasonably foreseeable and substantial risks to the human rights of future generations. The Special Rapporteur on extreme poverty and human rights, Philip Alston, highlighted the lack of adequate regulation in the science and technology sector, where human rights are often overlooked.⁸⁴¹ The failure to effectively regulate is particularly pronounced when considering the implications of scientific and technological developments with significant long-term risks, such as genetic engineering and geo-engineering, both referred to as examples in Principle 19 (f). Concerning genetic engineering, Article 16 of the Universal Declaration on Bioethics and Human Rights on "protecting future generations" stipulates that the "impact of life sciences on future generations, including on their genetic constitution, should be given due regard."⁸⁴² Similarly, the UNESCO Declaration on the Human Genome and Human Rights provides that the human genome must be protected as part of humanity's common heritage, with strict limitations on genetic modifications to protect human rights and fundamental freedoms.⁸⁴³ The Oviedo Convention on Human Rights and Biomedicine reinforces the protection of human rights in the context of scientific advancements, with the object and purpose of protecting human dignity with regard to the application of biomedical research and medicine, including imposing restrictions on genetic testing and engineering.⁸⁴⁴ The effective regulation of scientific and technological activities is particularly necessary to

Industries, Environment and Human Rights Violations in Africa and Renewal of its Mandate, ACHPR/Res. 321 (LVII) 2015, Afr. Comm'n H.P.R. (Nov. 18, 2015).

837. Comm. on Econ., Soc., & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 23.

838. Convention to Combat Desertification, *supra* note 96, pmb. ¶ 26.

839. *Id.* arts. 1–3.

840. *Id.* art. 4.

841. *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Digital Welfare State*, Philip Alston, U.N. GAOR, 74th Sess., Agenda Item 3, ¶ 35, U.N. Doc. A/74/493 (2019).

842. UNESCO Declaration on Bioethics and Human Rights, *supra* note 771.

843. UNESCO Declaration on the Human Genome and Human Rights, *supra* note 768, arts. 1, 5, 6, 9.

844. Oviedo Convention on Human Rights and Biomedicine, *supra* note 761, arts. 1, 12, 13, 15, 16, 28.

protect present and future generations of women and girls from its implications.⁸⁴⁵ The African Women's Protocol underscores this necessity by strictly prohibiting any medical or scientific experiments without informed consent.⁸⁴⁶

(9) Geo-engineering also raises distinct risks for present and future generations, which triggers States' obligation to protect by regulating research and applications in this area, and prohibiting developments that could result in violations of future generations' rights.⁸⁴⁷ The Human Rights Council Advisory Committee's report on the impact of new technologies intended for climate protection on the enjoyment of human rights, specifically highlighted that geo-engineering technologies, such as non-nature-based carbon dioxide removal and solar radiation modification techniques, present significant risks to the human rights of future generations, including potential disruptions to life, weather patterns, food security, and water availability.⁸⁴⁸ The report indicated that new technologies intended for climate protection (NTCPs) carry significant risks because their scientific bases "are unproven on a large scale" and:

may create climate-related harms in the future if these technologies prove not as efficient as assumed by some. If the gamble fails, present and future generations and the poorest within them will bear the cost of that failure. Another ethical risk emanates from hubris. Large-scale NTCPs deployment may greatly overestimate the ability of humans to understand complex natural systems and manage carbon cycle flows, thereby risking doing more harm than good.⁸⁴⁹

The report indicated that due to the speculative nature of geo-engineering technologies, coupled with their uncertain impacts on ecosystems and human rights, requires a precautionary approach to protect the rights of present and future generations, as NTCPs may amplify existing inequalities and lead to extensive and irreversible environmental damage and moral hazard risks, delaying critical climate action and systemic changes.⁸⁵⁰

(10) Beyond these human rights-specific standards, other international legal standards reinforce the duty of States to regulate potentially harmful scientific activities as part of their protection obligations. The Convention on Biological Diversity and its Protocols mandate risk assessments for any activities relating to living modified organisms.⁸⁵¹ According to the Protocols, these assessments must ensure that biotechnology, including genetic engineering and geo-engineering, which have far-reaching effects on ecosystems and human health, is developed and applied responsibly to avoid harming biodiversity and to contribute to its conservation and sustainable

845. See, e.g., Comm. on Econ., Soc., & Cult. Rts., *General Comment No. 22*, *supra* note 204, ¶¶ 21–24; Comm. on Econ., Soc., & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 29–33, 72, 74; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 24*, *supra* note 204, ¶ 20.

846. African Women's Protocol, *supra* note 204, arts. 3(1), 4(2)(h).

847. See e.g., Aarti Gupta et al., *Towards a Non-Use Regime on Solar Geoengineering: Lessons from International Law and Governance*, 13 *Transnat'l Env't L.* 368–99 (2024).

848. *Report of the Human Rights Council Advisory Committee, Impact of New Technologies Intended for Climate Protection on the Enjoyment of Human Rights*, U.N. H.R.C., Sept. 11 – Oct. 6, 2023, Agenda Items 3 & 5, ¶¶ 3–4, 16–18, 53, U.N. Doc. A/HRC/54/47 (2023).

849. *Id.* ¶ 25.

850. *Id.* ¶¶ 36–38, 65.

851. Convention on Biological Diversity, *supra* note 96, art. 14; Cartagena Protocol on Biosafety, *supra* note 752; Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety, *adopted* Oct. 15, 2010, Depositary Notif. C.N.782.2010.TREATIES-1, Oct. 15, 2010 (*entered into force* Mar. 5, 2018) [hereinafter Nagoya-Kuala Lumpur Supplementary Protocol].

use.⁸⁵² The Geneva Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques further prohibits the deployment of large-scale geo-engineering and environmental modification techniques as a means of warfare.⁸⁵³ While the Convention focuses on aspects of military applications, it also addresses the risks of environmental manipulation, including geo-engineering, which poses threats to future generations and ecosystems, from which they must be protected.⁸⁵⁴

(11) Principle 19 (g) concerns the failure to adopt effective measures to protect State and international decision-making processes from undue corporate influence or corporate capture, which nullifies or impairs the human rights of future generations. The UN Guiding Principles on Business and Human Rights (UNGPHR) affirm that States must adopt measures to provide protection against human rights abuses by third parties, including businesses.⁸⁵⁵ In this respect, the Working Group on business and human rights, in its report on corporate influence in the political and regulatory sphere, emphasized the importance of transparency in corporate political engagement. The report specifically called for the disclosure of political spending and lobbying activities to prevent corporate interests from unduly influencing national and international decision-making.⁸⁵⁶ These standards similarly apply to the human rights of future generations.

(12) Principle 19 (h) addresses the failure to prevent the monopolization of access to knowledge and the abusive corporate control of data required for the realization of the human rights of future generations. The Special Rapporteur on freedom of opinion and expression, Frank La Rue, pointed out that the right to truth and access to information is vital for transparency, accountability, and the prevention of future human rights violations.⁸⁵⁷ The Committee on Economic, Social and Cultural Rights further observed that “many of the emerging inequalities are strongly linked to the capacity of some business entities to access, store and exploit massive data, it is crucial to regulate the ownership and control of data according to human rights principles.”⁸⁵⁸ In further support of Principle 19 (h), the report of the UN Office of the High Commissioner for Human Rights (OHCHR) on technology companies called for the regulation of technology companies to ensure that their data control respects human rights, recommending that States review existing laws to protect against abuses in the digital space.⁸⁵⁹ These standards and regulatory frameworks must equally apply to future generations. For example, the Inter-American Court of Human Rights has explicitly held that States have an obligation to establish

852. Cartagena Protocol on Biosafety, *supra* note 752, pmb. ¶¶ 2, 4–6, arts. 1, 3(g), (i), 15; Nagoya-Kuala Lumpur Supplementary Protocol, *supra* note 851, arts. 1, 2(b), 3.

853. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques arts. I, II, *adopted* Dec. 10, 1976, 1108 U.N.T.S. 151 (*entered into force* Oct. 5, 1978).

854. *Id.* pmb. ¶ 5, arts. I, II.

855. UNGPHR, *supra* note 791, princ. 1.

856. *Report of the Working Group on Business and Human Rights, Corporate Influence in the Political and Regulatory Sphere*, U.N. GAOR, 77th Sess., Agenda Item 29(b), ¶ 99(g)–(h), U.N. Doc. A/77/201 (Jul. 20, 2022).

857. *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Right to Access Information, Frank La Rue*, U.N. GAOR, 68th Sess., Agenda Item 69(b), ¶¶ 87–89, U.N. Doc. A/68/362 (Sept. 4, 2013).

858. *General Comment No. 25, supra* note 39, ¶ 76.

859. *Report of the OHCHR, The Practical Application of the Guiding Principles on Business and Human Rights to the Activities of Technology Companies*, U.N. H.R.C., 50th Sess., Agenda Items 2 & 3, ¶ 82, U.N. Doc. A/HRC/50/56 (Apr. 21, 2022).

mechanisms that require companies to act as “subjects obliged to receive, process and respond to requests for access to information” when their activities have an intergenerational impact on human rights.⁸⁶⁰

(13) Principle 19 (i) concerns the failure to adopt legislation, programs, and policies that protect the right to work and rights in work in the context of technological innovations that pose a substantial and reasonably foreseeable risk to the full enjoyment of these rights by future generations.⁸⁶¹ The Special Rapporteur on extreme poverty and human rights, Philip Alston, in the report on the digital welfare State, addressed the impact of automation, technological innovations, and AI on the future of work.⁸⁶² The report pointed out the risks of technological advancements leading to job losses, exacerbating inequalities, and undermining workers’ rights.⁸⁶³ The Special Rapporteur thus urged States to adopt measures that protect workers from the adverse effects of technological progress, ensuring the right to decent work, both now and in the future.⁸⁶⁴ The Committee on Economic, Social and Cultural Rights’ General Comments provide significant guidance on States’ obligations to ensure that technological innovations do not undermine the right to work or the right to just and favorable conditions of work.⁸⁶⁵ The Committee specifically clarified that technological developments in the private employment sector must be regulated to prevent job losses and exploitation, and ensure equal access to job opportunities.⁸⁶⁶ Further, the 2021 Report of the Human Rights Council Advisory Committee on new and emerging digital technologies and human rights, underscored the gendered impact of automation, further noting that many jobs may disappear due to automation, increasing economic inequalities and exposing workers to poor working conditions and job insecurity.⁸⁶⁷ Taking these human rights standards together, States must proactively regulate technological advancements and ensure that the rights of future generations are safeguarded by implementing legislation and policies that protect workers from these emerging threats.

(14) Principle 19 (j) mirrors established human rights protection obligations relating to the rights of Indigenous Peoples,⁸⁶⁸ peasants and traditional communities,⁸⁶⁹ and the prevention of the appropriation of their systems of knowledge by State and non-State actors.⁸⁷⁰ In its General Comment 21, the Committee on Economic, Social and Cultural Rights underscored the need to protect the cultural productions and traditional knowledges of Indigenous Peoples, including their natural medicines, folklore, and rituals, from unjust exploitation by both State and private

860. *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 342, 354 (Nov. 27, 2023).

861. These rights are guaranteed in UDHR, *supra* note 29, art. 23(1); ICESCR, *supra* note 14, arts. 6(1), 7. See generally AARON BENANAV, AUTOMATION AND THE FUTURE OF WORK (2020); Martin Kwan, *Automation and the International Human Right to Work*, 35 Emory Int’l L. Rev. Recent Dev. 37–57 (2021).

862. Special Rapporteur on Extreme Poverty and Human Rights, *Digital Welfare State*, U.N. Doc. A/74/493 (2019).

863. *Id.* ¶¶ 6, 22, 48, 84.

864. *Id.* ¶¶ 77, 83–84.

865. See, e.g., *General Comment No. 19*, *supra* note 65, ¶¶ 16, 33–38, 51; *General Comment No. 23: The Right to Just and Favourable Conditions of Work*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., ¶¶ 50, 59, 65, U.N. Doc. E/C.12/GC/23 (2016); *General Comment No. 25*, *supra* note 39, ¶¶ 64–65, 76; *General Comment No. 26*, *supra* note 187, ¶¶ 2, 18.

866. *General Comment No. 25*, *supra* note 39, ¶¶ 64, 76.

867. *Opportunities and Challenges of New and Emerging Digital Technologies*, ¶ 24, U.N. Doc. A/HRC/47/52 (2021). See also H.R.C. Res. 47/23, *New and Emerging Digital Technologies and Human Rights*, U.N. H.R.C., 47th Sess., Agenda Item 3, U.N. Doc. A/HRC/RES/47/23 (Jul. 16, 2021).

868. UNDRIP, *supra* note 141, arts. 10–13, 25, 26(c), 31–32.

869. UNDROP, *supra* note 591, arts. 19(1)–(2), 20, 26.

870. See Commentary, *Princs.* 11–12.

entities.⁸⁷¹ General Comment 25 further elaborated on the importance of safeguarding local and traditional knowledges, particularly concerning Nature and biodiversity, and mandates States to take measures, including establishing special intellectual property regimes, to secure the ownership and control of such knowledge by Indigenous and traditional communities.⁸⁷² In order to avoid violating their obligations to protect, States must also facilitate the full participation of Indigenous Peoples and peasants and traditional communities in developing appropriate protection systems.⁸⁷³ The failure to sufficiently protect the knowledge systems of Indigenous Peoples, peasants and traditional communities risks diminishing or destroying the rich cultural heritage they hold in trust for present and future generations. The Inter-American Court of Human Rights has stated:

For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.⁸⁷⁴

(15) Principle 19 (k) restates established human rights standards that impose on States the obligation to protect by investigating and providing appropriate remedies for human rights abuses by non-State actors,⁸⁷⁵ including reparation, and prosecution where appropriate.

20. *Obligation to Fulfill Human Rights of Future Generations*

- a) *States must take all necessary measures to fulfill the human rights of future generations, including by providing and mobilizing adequate financial resources and technical assistance.*
- b) *States must create an enabling environment to prevent and remove the causes of asymmetries and inequalities between and within States, and the structural obstacles and factors that generate or perpetuate poverty and inequality for future generations.*
- c) *Necessary measures include, but are not limited to:*
 - i. *Recognizing the human rights of future generations in appropriate normative instruments, such as national constitutions and legislation;*
 - ii. *Adopting framework legislation that allocates duties and responsibilities in relation to the fulfillment of the rights of future generations to different levels and branches of the State and dedicated agencies and commissions, and sets appropriate time-bound targets;*
 - iii. *Establishing a domestic mechanism that conducts a prior review or audit of the potential effects of legislation, bills and policies and other governmental decisions on the human rights of future generations;*
 - iv. *Imposing duties on State and non-State actors to carry out environmental and human rights impact assessments of decisions, explicitly including impacts on the rights of future generations;*
 - v. *Ensuring that the burdens of mitigating and remedying climate change and other forms of environmental destruction are not shifted to future generations;*

871. Comm. on Econ., Soc., & Cult. Rts., *General Comment No. 21*, *supra* 851, ¶ 55(c), (e), (f)–(h).

872. *Id.* ¶ 39.

873. *Id.* ¶ 40. See Commentary, Princs. 11–12.

874. *Mayagna (Sumo) Awas Tingni Community v. Nicar.*, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 149 (2001).

875. *E.g.*, UNGPBHR, *supra* note 791, princs. 1, 5, 21; Comm. on Rts. Child, *General Comment No. 16*, *supra* note 75, ¶¶ 66–72, 76–77; Comm. on Econ., Soc., and Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 33–35. See Commentary, Princ. 24.

- vi. *Ensuring that disadvantaged groups, developing States, in particular least developed States, small island developing States, and States in conflict and post-conflict situations do not bear disproportionate costs and burdens of mitigating and remedying environmental destruction;*
- vii. *Designing and implementing educational and awareness programs on the human rights of future generations;*
- viii. *Taking positive measures to facilitate knowledge and understanding of the human rights of future generations;*
- ix. *Phasing out unsustainable consumption and production patterns and waste generation that jeopardizes the Earth's ability to sustain future generations. Wealthier States must proceed more expeditiously under the principle of common but differentiated responsibilities and respective capabilities;*
- x. *Developing and implementing human rights-based governance and regulation of information and communication technologies that ensures, non-discriminatory access to the internet, and public control of data infrastructure;*
- xi. *Providing financial and other forms of support to representatives of future generations to participate in public deliberation, mobilize, and advocate for their human rights;*
- xii. *Creating an enabling environment that fosters and promotes the capacity of individuals, community-based organizations, social movements, non-governmental organizations, and Indigenous Peoples to defend all the human rights of future generations, including the right to self-determination;*
- xiii. *Removing barriers for women and girls to participate fully and equally in education and the economy, including in areas in which they are under-represented, such as science, technology, engineering and mathematics.*

Commentary

(1) Principle 20 (a) refers to the obligation to fulfill human rights, which requires States to take all appropriate positive measures to ensure that human rights are fully realized. Such measures include legislative, judicial, policy, administrative, financial, data-gathering, planning, educational, and social measures.⁸⁷⁶ In the context of future generations, the obligation to fulfill requires States to put in place the normative frameworks, strategic planning processes, and institutional machinery necessary to guarantee that future generations will be able to enjoy their human rights fully and without discrimination. The realization of human rights also depends on the mobilization and allocation of sufficient resources.⁸⁷⁷ Sufficient resources must be mobilized and allocated toward ensuring the fulfillment of the rights of future generations. This would include, for example, dedicated provisioning in national budgets for securing the rights of future generations. In his Report on the right to development of children and future generations, the Special Rapporteur on the right to development, Surya Deva, recommended that States “consult trustees or guardians of future generations for making decisions concerning annual budget, fiscal

876. See, e.g., Hum. Rts. Comm., *General Comment No. 31*, *supra* note 653, ¶¶ 6–7; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 3*, *supra* note 777, ¶¶ 4–7; Comm. on Rts. Child, *General Comment No. 19*, *supra* note 77, ¶¶ 18–24.

877. For a detailed analysis, see Olivier De Schutter, *Public Budget Analysis for the Realization of Economic, Social and Cultural Rights: Conceptual Framework and Practical Implementation*, in *THE FUTURE OF ECONOMIC AND SOCIAL RIGHTS* 527–623 (Katharine G. Young ed., 2019). See also Rodrigo Uprimny et al., *Bridging the Gap: The Evolving Doctrine on ESCR and ‘Maximum Available Resources’*, in *THE FUTURE OF ECONOMIC AND SOCIAL RIGHTS* 624–53 (Katharine G. Young ed., 2019).

policies and the borrowing of money.⁸⁷⁸ In this context, reference is made to the good practice of the Australian Charter of Budget Honesty Act 1998, which requires the Treasurer “to publicly release and table an intergenerational report at least once every 5 years.”⁸⁷⁹ The aim of such a report is “to assess the long-term sustainability of current Government policies over the 40 years following the release of the report, including by taking account of the financial implication of demographic change.”⁸⁸⁰ The Special Rapporteur noted that an existing process such as the aforesaid intergenerational report “could be leveraged to consider the human rights of future generations and involve their representatives in developing an intergenerational report.”⁸⁸¹ The rights of future generations therefore cannot be realized without States taking proactive measures with the express purpose of fulfilling their rights. As stated by the Committee on Economic, Social and Cultural Rights in the context of the right to water, “States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations.”⁸⁸²

(2) In accordance with Principle 20 (b), States must create “an enabling environment to prevent and remove the causes of asymmetries and inequalities between and within States, and the structural obstacles and factors that generate or perpetuate poverty and inequality for future generations.” This Principle refers to the positive obligations of States to address the structural underlying causes that generate patterns of poverty and inequality across generations, particularly for descendants of historically disadvantaged groups, peoples, and States.⁸⁸³ As Guiding principle 3 of the 2024 UN Declaration on Future Generations notes:

The opportunity for future generations to thrive in prosperity and achieve sustainable development must be ensured, including by eliminating the intergenerational transmission of poverty and hunger, inequality and injustice, and acknowledging the special challenges faced by the most vulnerable countries, in particular African countries, least developed countries, landlocked developing countries and small island developing States.⁸⁸⁴

The commitments of States in the Declaration include eliminating “all forms of persistent and structural inequalities, including by acknowledging, addressing and taking effective measures to remedy past tragedies and their consequences” and eradicating “all forms of discrimination.”⁸⁸⁵

(3) Principle 20 (c) provides an indication of the types of measures that would be necessary to fulfill the human rights of future generations. These include recognizing the entitlement of future generations to the enjoyment of all human rights in appropriate normative legal instruments such as national constitutions and human rights legislation according to Principle 20 (c) (i). Without explicit legal recognition, the human rights of future generations are at risk of being overlooked in planning, budgetary, and administrative processes. The choice of the appropriate normative instrument through which to recognize the human rights of future generations should be guided

878. Special Rapporteur on the Right to Development, *Children and Future Generations*, ¶ 86, U.N. Doc. A/HRC/57/43 (2024).

879. *Id.*

880. *Id.*

881. *Id.*

882. *General Comment No. 15*, *supra* note 64, ¶ 28.

883. *See* Commentary, *Princs.* 6–7.

884. 2024 UN Declaration on Future Generations, *supra* note 8, *guid. princ.* 3.

885. *Id.* *commit.* 14.

by what instrument has “proved to be most effective in the country concerned in ensuring the protection of other human rights.”⁸⁸⁶

(4) In addition to normative recognition at the highest level, Principle 20 (c) (ii) stipulates that framework legislation is necessary to ensure an allocation of duties and responsibilities related to the fulfillment of the rights of future generations to different levels and branches of the State and dedicated agencies and commissions.⁸⁸⁷ Through such framework legislation, appropriate time-bound goals and targets can be set, for example, through subsidiary regulations and policies.

(5) Moreover, it is necessary to conduct a prior review of the potential effects of all national legislation, draft legislation, and policies to ensure that they do not undermine the fulfillment of the human rights of future generations. Principle 20 (c) (iii) stipulates that this will require a dedicated domestic mechanism with a specific mandate to consider the long-term impacts of legislation and policy on the human rights of future generations. Pursuant to Principle 20 (c) (iv), duties must also be imposed on States and non-State actors to carry out human rights impact assessments of their decisions and activities,⁸⁸⁸ explicitly including potential impacts on the human rights of future generations. The dedicated domestic mechanism can also serve as an accountability forum to ensure that States and non-State actors fulfill their obligations imposed by the human rights of future generations.

(6) According to Principle 20 (c) (v), a further necessary measure is to ensure that the burden of mitigating and remedying climate change and other forms of environmental destruction is not shifted onto future generations. This will have the effect of undermining the fulfillment of future generations’ human rights. The German Federal Constitutional Court has confirmed that imposing a disproportionate burden on future generations to reduce carbon emissions is impermissible because it imposes excessive restrictions on their rights and freedoms.⁸⁸⁹ In *Verein Klimaseniorinnen v. Switzerland*, the European Court of Human Rights underscored the importance of “intergenerational burden-sharing,” both with regard to different generations of those currently living and regarding future generations.⁸⁹⁰ The Court acknowledged that “future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change . . . and that, at the same time, they have no possibility of participating in the relevant decision-making processes.”⁸⁹¹

(7) Principle 20 (c) (vi) provides that in the fulfillment of States’ obligations to mitigate and remedy environmental destruction, disproportionate costs and burdens should not be placed on

886. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 9*, *supra* note 806, ¶ 7.

887. On framework legislation in the context of the right to food, see Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 12*, *supra* note 39, ¶¶ 29–30.

888. On environmental and human rights impact assessments, see Guiding Principles on HRIAs of Economic Reforms, *supra* note 779; NORA GÖTZMANN ED., *HANDBOOK ON HUMAN RIGHTS IMPACTS ASSESSMENT* (2019); PHILIPPE SANDS ET AL., *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 657–81 (4th ed., 2018).

889. *Neubauer v. Germ.*, *supra* note 22, ¶¶ 192–93.

890. *Verein Klimaseniorinnen v. Switz.*, App. No. 53600/20, Eur. Ct. H.R., ¶¶ 419–20 (2024).

891. *Id.* ¶ 420. For a comment on the intergenerational dimensions of the judgment, see Aoife Nolan, *Intergenerational Equity, Future Generations and Democracy in the European Court of Human Rights’ Klimaseniorinnen Decision*, EJIL:Talk! (Apr. 15, 2024), <https://www.ejiltalk.org/inter-generational-equity-future-generations-and-democracy-in-the-european-court-of-human-rights-klimaseniorinnen-decision/>.

disadvantaged groups, developing States, particularly least developed States, small island developing States, and States in conflict and post-conflict situations.⁸⁹² In the 2024 UN Declaration on Future Generations, States commit to investing in capacity-building to enhance preparedness and the ability to respond to “future global shocks, crises and challenges,” using “evidence-based planning and foresight to avoid and mitigate risks, while ensuring that the poorest and most vulnerable do not bear disproportionate costs and burdens of mitigation, adaptation, restoration and resilience-building.”⁸⁹³

(8) Subparagraphs (vii) and (viii) of Principle 20 (c) highlight the importance of educational and awareness knowledge dissemination programs in fulfilling the human rights of future generations.⁸⁹⁴ This obligation encompasses measures aimed at bringing about changes in public consciousness, perception, or understanding of the human rights of future generations.⁸⁹⁵

(9) As stated in Principle 20 (c) (ix), a necessary measure for fulfilling the human rights of future generations is the phasing out of unsustainable consumption and production patterns,⁸⁹⁶ as well as waste generation that jeopardizes the Earth’s ability to sustain future generations. The concept of sustainability recognizes that human rights must be available and accessible over the long-term, including for future generations. Thus, in the context of the right to food, the Committee on Economic, Social and Cultural Rights has commented that “the notion of *sustainability* is intrinsically linked to the notion of adequate food or food *security*, implying food being accessible for both present and future generations.”⁸⁹⁷ The Earth Charter explicitly provides for the adoption of “patterns of production, consumption, and reproduction that safeguard [the] Earth’s regenerative capacities, human rights, and community well-being.”⁸⁹⁸ Principle 20 (c) (ix) further highlights that a greater burden to phase out unsustainable consumption and production patterns and waste generation rests on wealthier States in line with the principle of CBDR-RC.⁸⁹⁹ Of particular relevance to developing more sustainable models of development is the commitment in the 2024 Pact for the Future to develop a framework on measures of progress on sustainable development to complement and go beyond gross domestic product.⁹⁰⁰

(10) Principle 20 (c) (x) focuses on the importance of developing and implementing human rights-based governance and regulation of information and communication technologies that ensure non-discriminatory access to the internet and public control of data infrastructure. This is

892. *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 16, U.N. Doc. A/68/322 (2013). See Commentary, Princs. 10, 19(b), (c), 24(d).

893. 2024 UN Declaration on Future Generations, *supra* note 8, actn. 27.

894. For sources on human rights education, see generally U.N. OHCHR, *The Right to Human Rights Education: A Compilation of Provisions of International and Regional Instruments Dealing with Human Rights Education*, <https://www.ohchr.org/en/resources/educators/human-rights-education-training/right-human-rights-education>.

895. HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* 184 (2d ed., 2000).

896. This is an integral principle of sustainable development affirmed in 2030 Agenda for Sustainable Development, *supra* note 335, ¶ 28.

897. *General Comment No. 12*, *supra* note 39, ¶ 7 (emphases in original).

898. Earth Charter, *supra* note 215, princ. 6.

899. Rio Declaration on Environment and Development, *supra* note 97, princ. 7; 2030 Agenda for Sustainable Development, *supra* note 335, ¶ 12. See also UNFCCC, *supra* note 98, pmb. ¶ 6, arts. 3(1), 4(1).

900. 2024 Pact for the Future, *supra* note 16, actn. 53, ¶ 81. See also *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Eradicating Poverty Beyond Growth*, Olivier De Schutter, U.N. GAOR, 56th Sess., Agenda Item 3, U.N. Doc. A/HRC/56/61 (May 1, 2024).

essential to ensure that new and emerging technologies fulfill, rather than undermine, the human rights of future generations.⁹⁰¹

(11) In line with Principle 20 (c) (xi), an important component of the duty to fulfill rights is the drafting of participatory national strategies and plans of action to secure the realization of rights.⁹⁰² It is essential that public and private support, including financial support, be provided to representatives of future generations to enable them to participate in public deliberations, mobilize, and advocate for the human rights of future generations.⁹⁰³

(12) As per Principle 20 (c) (xxi), creating an enabling environment that fosters and promotes the capacity of individuals, community-based organizations, social movements, non-governmental organizations, and Indigenous Peoples to defend the human rights of future generations, including the right to self-determination, is also a necessary measure to fulfill their rights. Given that future generations are not represented in political institutions such as legislatures,⁹⁰⁴ it is essential that the representatives and organizations advocating and mobilizing for their rights are protected and supported.⁹⁰⁵

(13) As stated in Principle 20 (c) (xiii), without deliberate and concrete measures to remove barriers preventing women and girls from fully and equally participating in education and the economy, including in areas where they are under-represented, patterns of gender inequality will continue to be transmitted to future generations. Such measures are essential not only to ensuring gender equality across generations but also to ensuring that developments in the fields of science, technology, and socio-economic policy are not gender-biased and are responsive to women's particular needs and circumstances.⁹⁰⁶

21. *Violations of the Obligation to Fulfill*

Violations of obligations to fulfill the human rights of future generations by States include, but are not limited to:

- a) The failure to take positive measures to facilitate knowledge and understanding of the human rights of future generations;*
- b) The failure to adopt and implement legislation, policies and programs to eradicate the intergenerational transmission of poverty and disadvantage;*
- c) The failure to establish appropriate monitoring mechanisms to evaluate progress in the fulfillment of rights, including the rights of future generations;*

901. On non-discriminatory access to the internet as a component of the right of everyone to enjoy the benefit of scientific progress and its applications in terms of the ICESCR, *supra* note 14, art. 15. See Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶ 45. See also Commentary, Princ. 17(l), (m), (p).

902. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 13*, *supra* note 586, ¶¶ 43(f), 54.

903. See Commentary, Princ. 22.

904. *Neubauer v. Germ.*, *supra* note 22, ¶ 205.

905. On the special challenges faced by children and youth human rights defenders, see *Report of the Special Rapporteur on Human Rights Defenders, "We are not just the future": Challenges Faced by Child and Youth Human Rights Defenders*, Mary Lawlor, U.N. GAOR, 55th Sess., Agenda Item 3, U.N. Doc. A/HRC/55/50 (Jan. 17, 2024).

906. See Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 29–33; 2024 UN Declaration on Future Generations, *supra* note 8, guid. princ. 7, commit. 13.

- d) *The failure to ensure that the rights of future generations are fully integrated in national human rights strategies and plans of action;*
- e) *The failure to ensure, at the very least, the satisfaction of essential levels of social, economic and cultural rights for present generations, and to take measures that enable future generations to ensure these levels for themselves;*
- f) *The failure to take individual and collective measures to reduce inequality both within and between States;*
- g) *The failure to mobilize and allocate adequate resources, including from international assistance and cooperation, to facilitate the full and equal enjoyment of human rights by future generations;*
- h) *The failure to invest adequate resources to ensure a just and fair transition from the production and use of fossil fuels and other ecologically harmful activities;*
- i) *The failure to take appropriate measures to prevent potential public health emergencies in the future;*
- j) *The adoption of retrogressive measures that result in the unjustified reduction or diminishment in the enjoyment of human rights by future generations;*
- k) *The failure to prioritize the realization of the rights of marginalized and disadvantaged groups in realizing the rights of future generations.*

Commentary

(1) Principle 21 encompasses illustrative examples of violations by States of their obligation to fulfill the human rights of future generations. Each example illustrates the core content of the obligation to fulfill the human rights of future generations and failure to uphold them results in a violation.

(2) Example 21 (a) pertains to the failure of a State to take the necessary measures to facilitate knowledge and understanding of the human rights of future generations.⁹⁰⁷

(3) In line with Principle 20 (b), States that fail to take measures to eradicate the intergenerational transmission of poverty and disadvantage violate their obligation to fulfil the human rights of future generations, particularly those of descendants from groups that are systemically disadvantaged and at the greatest risk of human rights violations. For instance, CERD prohibits discrimination on the ground of “descent.” The Committee on the Elimination of All Forms of Racial Discrimination has interpreted descent as a ground of discrimination as including social stratification, such as caste or an analogous system of inherited status, that impairs or nullifies the equal enjoyment of all rights.⁹⁰⁸ The measures recommended by the Committee to eliminate descent-based discrimination include that States Parties “elaborate, adopt and implement plans and programmes of economic and social development on an equal and non-discriminatory basis” and “[t]ake substantial and effective measures to eradicate poverty among descent-based communities and combat their social exclusion or marginalization.”⁹⁰⁹

907. On education, awareness, and access to information campaigns in the context of cultural rights and the rights of Indigenous women and girls, see, e.g., see Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶¶ 52(i), 53–54; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 39*, *supra* note 39, ¶ 33(j).

908. Comm. on Elim. Racial Discrim., *General Recommendation No. 29*, *supra* note 284, ¶ 1(a).

909. *Id.* ¶ 7(gg), (hh). See Commentary, Princ. 7(a).

(4) An integral component of the duty to fulfill human rights includes establishing appropriate monitoring mechanisms to evaluate progress in the fulfillment of human rights. Without proper monitoring mechanisms, it is impossible for progress in the fulfillment of rights to be evaluated and, if necessary, for corrective measures to be taken. This obligation extends to the human rights of future generations, as stated in Principle 21 (c). As the Committee on Economic, Social and Cultural Rights has noted:

States parties are obliged to monitor effectively the implementation of measures to comply with . . . the Covenant. Monitoring should assess both the steps taken and the results achieved in the elimination of discrimination. National strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination.⁹¹⁰

(5) Human rights strategies and national plans of action are essential components of States' obligations to fulfill human rights.⁹¹¹ In terms of Principle 21 (d), the failure to integrate the rights of future generations in national human rights strategies and plans of action constitutes a violation of the rights of future generations. This is a logical consequence of the recognition of the human rights of future generations.

(6) Principle 21 (e) affirms that the minimum core obligation that everyone is entitled to essential levels of ESCRs also applies to both present and future generations.⁹¹² A failure to ensure that future generations will have access to these essential levels of ESCRs constitutes a violation of the obligation to fulfill rights. Access to such minimum essential levels of ESCRs for both present and future generations is a priority obligation for States Parties. As the Committee on Economic, Social and Cultural Rights has commented:

In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.⁹¹³

(7) Principle 21 (f) emphasizes that inequality, both within and amongst States, constitutes a serious threat to the obligation to ensure the enjoyment of all human rights.⁹¹⁴ Sustainable Development Goal (SDG) 10 of the 2030 Agenda for Sustainable Development commits States to reducing inequality both within and between countries.⁹¹⁵ In the context of the periodic reporting system, the Committee on Economic, Social and Cultural Rights requires States Parties to provide information on the impact of income and wealth inequalities on the enjoyment of economic, social and cultural rights. As the Committee notes, this reflects "the common understanding that the eradication of poverty will not be achieved in the context of widening gulfs between rich and poor both within and among countries."⁹¹⁶ Inequality and disadvantage are perpetuated over generations, creating deep patterns of poverty and systemic disadvantage.⁹¹⁷

910. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20*, *supra* note 260, ¶ 41.

911. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 22*, *supra* note 204, ¶¶ 49(b), 61; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 87–88.

912. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 3*, *supra* note 777, ¶ 10.

913. *Id.*

914. See GILLIAN MACNAUGHTON ET AL. EDS., *HUMAN RIGHTS AND ECONOMIC INEQUALITIES* (2021).

915. 2030 Agenda for Sustainable Development, *supra* note 335, SDG 10.

916. *Statement, Pledge to Leave No One Behind*, ¶ 9, U.N. Doc. E/C.12/2019/1 (2019).

917. See *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Persistence of Poverty: How Real Equality Can Break the Vicious Cycles*, Olivier De Schutter, U.N. H.R.C., 76th Sess., Agenda Item 75(b), U.N. Doc. A/76/177 (July 19, 2021).

A failure to take individual and collective measures to reduce such inequalities constitutes a violation of States' obligations to fulfill the human rights of future generations.

(8) The failure to mobilize and allocate responses required to fulfil the human rights of future generations is recognized as a violation of the rights of future generations in terms of Principle 21 (g). Human rights treaty bodies and academic commentators and practitioners have elaborated extensively on the obligation to mobilize resources and budget appropriately for the fulfillment of human rights obligations.⁹¹⁸ This obligation is also applicable to the fulfilment of the human rights of future generations.⁹¹⁹

(9) Principle 21 (h) recognizes that a failure to invest adequate resources in a fair and just transition from the production and use of fossil fuels and other ecologically harmful activities constitutes a violation of the rights of future generations. Adequate investment in a fair and just transition is essential to fulfilling a range of human rights, including the rights to work, an adequate standard of living, and a clean, healthy and sustainable environment for both present and future generations.⁹²⁰

(10) Public health emergencies threaten the rights to health, life, and an adequate standard of living of present and future generations. Principle 21 (i) thus recognizes that it is essential that States take positive measures to anticipate and prevent potential future public health emergencies.⁹²¹ In terms of the 2024 UN Declaration on Future Generations, States commit to ensuring the right to the highest attainable standard of physical and mental health by providing "universal health coverage and strengthened and resilient health systems" and through "equitable access to safe, affordable, effective and quality medicines, vaccines, therapeutics and

918. See ICESCR, *supra* note 14, art. 2(1); CRC, *supra* note 12, art. 4; CRPD, *supra* note 33, art. 4(2); *Statement: An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 38th Sess., ¶ 51, U.N. Doc. E/C.12/2007/1 (Sept. 31, 2007); *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child*, U.N. GAOR, Comm. on Rts. Child, 34th Sess., ¶ 51, U.N. Doc. CRC/GC/2003/5 (2003); *Day of General Discussion on "Resources for the Rights of the Child: Responsibility of States"*, U.N. GAOR, Comm. on Rts. Child, 46th Sess. (Oct. 5, 2007); *Final Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, The Realisation of Economic, Social and Cultural Rights, Danilo Türk*, U.N. ESCOR, 44th Sess., U.N. Doc. E/CN.4/Sub.2/1992/16 (July 3, 1992); Robert E. Robertson, *Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realising Economic, Social, and Cultural Rights*, 16 Hum. Rts. Q. 693–714 (1994); Radhika Balakrishnan et al., *Maximum Available Resources & Human Rights: Analytical Report*, Center for Women's Global Leadership (2011); Sigrun Skogly, *The Requirement of Using the "Maximum of Available Resources" for Human Rights Realisation: A Question of Quality as Well as Quantity?*, 12 Hum. Rts. L. Rev. 393–420 (2012).

919. E.g., Comm. on Rts. Child, *General Comment No. 19, supra* note 77, ¶ 63.

920. *Report of the Special Rapporteur on Extreme Poverty and Human Rights, The "Just Transition" in the Economic Recovery: Eradicating Poverty within Planetary Boundaries*, Olivier De Schutter, U.N. GAOR, 75th Sess., Agenda Item 72(b), U.N. Doc. A/75/181/Rev/1 (Oct. 7, 2020); Special Rapporteur on Adequate Housing, *Climate Crisis and the Right to Housing*, U.N. Doc. A/HRC/52/28 (2022); Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Climate Justice and Racial Justice*, U.N. Doc. A/77/549 (2022); Special Rapporteur on Climate Change and Human Rights, *Supporting Climate Change Litigation and Advancing the Principle of Intergenerational Justice*, ¶ 69 (i), (j), (k), U.N. Doc. A/78/255 (2023).

921. ICESCR, *supra* note 14, art. 12(2)(c); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 14, supra* note 284, ¶ 44(f); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25, supra* note 39, ¶ 82; *Statement on the Coronavirus Disease (COVID-19) Pandemic and Economic, Social and Cultural Rights, adopted Apr. 6, 2020*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., U.N. Doc. E/C.12/2020/1 (Apr. 17, 2020).

other health products” to secure the well-being of present and future generations.⁹²² States that institute these positive measures will significantly reduce the prospects of public health emergencies in the future.

(11) Principle 21 (j) stipulates that the adoption of retrogressive measures that result in the unjustified reduction or diminishment of the enjoyment of human rights by future generations constitutes a violation of the obligation to fulfill human rights. According to the Committee on Economic, Social and Cultural Rights, there is a strong presumption that retrogressive measures are incompatible with the obligations imposed ESCRs and that States bear the burden of proving their compatibility with the relevant procedural and substantive criteria set out by the Committee.⁹²³ Thus, if States take measures that they can reasonably foresee will result in the reduction or diminishment of the enjoyment of rights by future generations without adhering to the relevant substantive and procedural requirements for retrogressive measures, they will be violating the human rights of future generations.

(12) In line with international human rights law, Principle 21 (k) requires the prioritization of marginalized and disadvantaged groups in taking measures to fulfill human rights. Such groups are at the greatest risk of the non-fulfillment of their human rights, often spanning across generations. These groups must be prioritized through a range of positive measures, including financial measures, and remedial and reparative programs.⁹²⁴ States that fail to prioritize marginalized and disadvantaged groups contribute to perpetuating these disadvantages to future generations, resulting in intergenerational human rights violations.

22. *Participation and Representation*

- a) *Future generations must be represented meaningfully and effectively in decision-making that may impact on their enjoyment of human rights.*
- b) *States must create the enabling conditions for representation of future generations to participate in decision-making. This includes recognizing bodies established by Indigenous Peoples, peasants and traditional communities that have developed their own mechanisms to represent future generations.*
- c) *States must recognize and respect that present children, adolescents and youth occupy a proximate position to future generations, and must protect their rights to be heard and other participatory rights, including when advocating for human rights on behalf of themselves and future generations.*
- d) *States must create accessible and inclusive bodies and institutions at all levels to ensure that the representatives of future generations can effectively participate in decision-making that affects their human rights. Examples of such bodies and institutions include: Ombudspersons, guardians, trustees or commissioners; designated seats in parliaments,*

922. 2024 UN Declaration on Future Generations, *supra* note 8, commit. 23.

923. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 3*, *supra* note 777, ¶ 9; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 19*, *supra* note 65, ¶ 42; *Statement on Public Debt, Austerity Measures and the ICESCR*, ¶ 4, U.N. Doc. E/C.12/2016/1 (2016); Comm. on Rts. Child, *General Comment No. 19*, *supra* note 77, ¶¶ 31, 63. For an exposition of these criteria, see Commentary, Princ. 3, ¶ 2.

924. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 3*, *supra* note 777, ¶ 10; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶¶ 13, 22; Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Climate Justice and Racial Justice*, ¶¶ 72–74, U.N. Doc. A/77/549 (2022). See Commentary, Princ. 6(d).

National Tribunals to protect Nature and/or National Human Rights Institutions. Special attention must be paid to ensure that these institutions and mechanisms are diverse and include meaningful and effective participation by groups that are disadvantaged or who have experienced systemic discrimination. The independence of such institutions must be guaranteed.

- e) *States must take adequate and effective measures to guarantee the rights of individuals or groups of individuals working to protect or promote the rights of future generations, including women, children and youth, Indigenous Peoples and environmental and human rights defenders. Such protection must ensure freedom from attacks, threats, intimidation, retaliation, stigmatization or criminalization.*

Commentary

(1) Principle 22 addresses the fundamental challenge that future generations cannot influence decision-making processes,⁹²⁵ despite being strongly affected by present-day decisions.⁹²⁶ This Principle thus recognizes the “distinct representational disadvantage” of future generations highlighted in *Verein Klimaseniorinnen v. Switzerland* by the European Court of Human Rights.⁹²⁷ Principle 22 (a) specifically calls for repurposing decision-making processes and forums to enhance and safeguard the human rights of future generations, aligning with the “all-affected principle” in international human rights law.⁹²⁸

(2) Under the international human rights framework, the “all-affected principle” finds expression in the right of individuals and groups to participate actively in decision-making processes that affect their rights.⁹²⁹ Representation refers to the right to have one’s interests and rights advocated for, either directly by oneself or representative groups, or indirectly through freely elected or appointed representatives.⁹³⁰ This means that individuals or groups should have their interests and rights represented in decision-making bodies or forums by individuals or entities who act on their behalf. Participation and representation are interrelated and complementary. In this respect,

925. Enikő Krajnyák, *The Voice of Future Generations: Institutional Representation, Lessons Learned and the Way Forward*, 16 Eur. J. Legal Stud. 9–29 (2024).

926. Deryck Beyleveld et al., *Why and How Should We Represent Future Generations in Policymaking?*, 6 Jurisprudence 549–66 (2015); HENRY SHUE, *THE PIVOTAL GENERATION: WHY WE HAVE A MORAL RESPONSIBILITY TO SLOW CLIMATE CHANGE RIGHT NOW* 58–88 (2021).

927. *Verein Klimaseniorinnen v. Switz.*, App. No. 53600/20, Eur. Ct. H.R., ¶¶ 420, 485 (2024).

928. Peter Lawrence, *Representation of Future Generations*, in ROUTLEDGE HANDBOOK OF GLOBAL SUSTAINABILITY GOVERNANCE 88, 92 (Agni Kalfagianni et al. eds., 2019); Michael Rose, *All-Affected, Non-Identity and the Political Representation of Future Generations: Linking Intergenerational Justice with Democracy*, in INTERGENERATIONAL EQUITY: ENVIRONMENTAL AND CULTURAL CONCERNS 32–51 (Thomas Cottier et al. eds., 2019); Kerry H. Whiteside, *Future Generations and the Limits of Representation*, in CREATING POLITICAL PRESENCE: THE NEW POLITICS OF DEMOCRATIC REPRESENTATION 205–28 (Dario Castiglione & Johannes Pollak eds., 2019); Peter Lawrence, *Justifying Representation of Future Generations and Nature: Contradictory or Mutually Supporting Values?*, 11 Transnat’l Env’t L. 553–79 (2022).

929. UDHR, *supra* note 29, arts. 19–20, 21(1)–(2); ICCPR, *supra* note 14, arts. 19, 21–22, 25; *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, U.N. GAOR, Hum. Rts. Comm., 57th Sess., ¶¶ 5–8, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 4*, *supra* note 682, ¶ 12; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 56; *Report of the OHCHR, Draft Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs*, U.N. H.R.C., 39th Sess., Agenda Items 2 & 3, ¶¶ 9, 66, 95, U.N. Doc. A/HRC/39/28 (July 20, 2018); *Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona*, U.N. GAOR, 63d Sess., Agenda Item 67 (b), ¶ 22, U.N. Doc. A/63/274 (Aug. 13, 2008); *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 149, 260 (2023).

930. UDHR, *supra* note 29, art. 21(1), (3); ICCPR, *supra* note 14, art. 25(a)–(b).

the OHCHR Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs illustrates:

While the responsibility and accountability for taking decisions ultimately rests with public authorities, the participation of various sectors of society allows the authorities to deepen their understanding of specific issues; helps to identify gaps, as well as available policy and legislative options and their impact on specific individuals and groups; and balances conflicting interests. As a consequence, decision-making is more informed and sustainable, and public institutions are more effective, accountable and transparent.⁹³¹

(3) The rights to meaningful and effective participation and representation are also indivisible and interdependent with all other rights and freedoms, especially the right to seek, receive and impart information, freedom of association and assembly, and the right to education, including the right to human rights education.⁹³² According to the Human Rights Committee, the right to participation in public affairs covers “all aspects of public administration, including the formulation and implementation of policy at international, national, regional and local levels.”⁹³³ The right to participation also necessitates participatory mechanisms with a legal basis, providing for “access to appropriate information, adequate support, feedback . . . and procedures for complaints, remedies or redress.”⁹³⁴ Participation should therefore not be a one-off event but requires a long process of intensive dialogue and deliberation regarding policies, programs, and measures in all relevant contexts.⁹³⁵ For example, the Committee on Economic, Social and Cultural Rights has said that participation in decision-making processes must be an ongoing and integral component of any policy, program, or strategy related ESCRs that must be protected for present and future generations.⁹³⁶

(4) Representation of future generations requires recognizing them as independent rights holders whose human rights must be respected, promoted, and fulfilled in current decisions to the extent that these decisions may affect any of their rights. The Special Rapporteur on the right to development, Surya Deva, indicated:

Taking seriously the human rights of future generations – including the right to development – will require decision makers at the local, national, regional and international levels to identify and prevent as much as possible any adverse impacts of present-time decisions on the rights of future generations or on their ability to realize these rights. A failure to do so will “narrow the choices of future generations” and in turn undermine their ability to realize their human rights.⁹³⁷

931. *Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs*, ¶ 2, U.N. Doc. A/HRC/39/28 (2018).

932. UDHR, *supra* note 29, arts. 19, 20; ICCPR, *supra* note 14, arts. 19, 21; Hum. Rts. Comm., *General Comment No. 25*, *supra* note 929, ¶ 12; Hum. Rts. Comm., *General Comment No. 34*, *supra* note 39, ¶¶ 18–19; Hum. Rts. Comm., *General Comment No. 37*, *supra* note 721, ¶¶ 9–10; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters art. 1, June 25, 1998, 2161 U.N.T.S. 447 [hereinafter Aarhus Convention]. See Commentary, Princ. 23.

933. Hum. Rts. Comm., *General Comment No. 25*, *supra* note 929, ¶ 5.

934. *General Comment No. 12: The Right of the Child to Be Heard*, U.N. GAOR, Comm. on Rts. Child, 51st Sess., ¶ 48, U.N. Doc. CRC/C/GC/12 (2009).

935. *Id.* ¶ 13.

936. This requirement has been outlined in General Comments related to the rights to food, health, water, and social security. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 12*, *supra* note 39, ¶ 23; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 14*, *supra* note 284, ¶ 54; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 48; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 19*, *supra* note 65, ¶ 69.

937. Special Rapporteur on the Right to Development, *Children and Future Generations*, ¶ 71 U.N. Doc. A/HRC/57/43 (2024) (citations omitted).

Principle 22 is grounded in each generation's trusteeship duties⁹³⁸ to ensure that present-day decisions in democratic processes, which exhibit a "presentist bias," do not sacrifice the long-term rights and well-being of humanity and the Earth's systems by prioritizing short-term gains.⁹³⁹ In this respect, the 1987 Brundtland Report stated:

Many present efforts to guard and maintain human progress, to meet human needs, and to realize human ambitions are simply unsustainable – in both the rich and poor nations. They draw too heavily, too quickly on already overdrawn environmental resource accounts to be affordable far into the future without bankrupting those accounts. They may show profits on the balance sheets of our generation, but our children will inherit the losses. We borrow environmental capital from future generations with no intention or prospect of repaying. They may damn us for our spendthrift ways, but they can never collect on our debt to them. We act as we do because we can get away with it: future generations do not vote; they have no political or financial power; they cannot challenge our decisions.⁹⁴⁰

(5) Each generation must find innovative means to represent future generations meaningfully and effectively. Anja Karnein argues:

[...] we would have to justify our decisions to future generations *as if they were present today*. Given that little of what we will thus justify will be verifiable during our lifetimes, we might get things horribly wrong by making assumptions, that, sooner or later, will turn out not to have been warranted. However, as long as these are sincere mistakes, future generations will not have reason to feel disrespected by us.⁹⁴¹

Each generation must therefore represent the interests and rights of future generations according to the best of their abilities and knowledge, with proper documentation and archiving to explain to future generations the bases of their decisions.⁹⁴² This will enable future generations to understand the past, learn from it, and improve their decisions when representing their future generations. The 2024 UN Declaration on Future Generations highlights this aspect, "[a]cknowledging that we must learn from our past achievements and failures, and their consequences, in order to ensure a more sustainable, just and equitable world for present and future generations, and understanding the interconnectedness of past, present and future."⁹⁴³

(6) Principle 22 (b) emphasizes States' obligations to create enabling conditions for the participation of future generations in decision-making. The UN General Assembly resolution 66/288 on the Future We Want recognized that "opportunities for people to influence their lives and future, participate in decision-making and voice their concerns are fundamental for sustainable development."⁹⁴⁴ In this respect, States must, individually and jointly, take steps to create enabling conditions at the national, regional, and international levels for the

938. See Commentary, Princ. 8.

939. KRZNNARIC, GOOD ANCESTOR, *supra* note 10, at 177; Dennis F. Thompson, *Representing Future Generations: Political Presentism and Democratic Trusteeship*, 13 Crit. Rev. Int'l Soc. & Pol. Phil. 17–37 (2010). See also Special Rapporteur on Extreme Poverty and Human Rights, *Eradicating Poverty Beyond Growth*, ¶¶ 38–41, U.N. Doc. A/HRC/56/61 (2024).

940. 1987 Brundtland Report, *supra* note 88, ¶ 25.

941. Anja Karnein, *Can We Represent Future Generations?*, in INSTITUTIONS FOR FUTURE GENERATIONS 83, 93 (Iñigo González-Ricoy & Axel Gosseries eds., 2016) (emphasis added).

942. Principle 9 on Prevention and Precaution must play an important role in this regard (see Commentary, Princ. 9). See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 56–57 (Committee links the importance of participation and the precautionary principle in controlling human rights risks involved in scientific processes).

943. 2024 UN Declaration on Future Generations, *supra* note 8, pmb. ¶ 6.

944. G.A. Res. 66/288, *The Future We Want*, adopted July 27, 2012, U.N. GAOR, 66th Sess., Agenda Item 19, ¶ 13, U.N. Doc. A/RES/66/288* (2012).

representation of future generations.⁹⁴⁵ For instance, at the international level, there have been proposals to explore the viability of establishing a Commissioner or Ombud for Future Generations, a Commission of Global Guardians for the Future, a repurposed Trusteeship Council, a Futures Lab, and a Special Envoy of the UN Secretary-General for Future Generations, to promote intergenerational solidarity, address the needs of future generations in high-level political forums, and improve institutional coordination on these issues.⁹⁴⁶ Specifically, the 2024 UN Declaration on Future Generations calls for these institutional developments to “foster” an “organizational culture that is future-oriented and mainstreamed across the United Nations system in order to facilitate science- and evidence-based decision-making by developing diverse capabilities, including anticipatory planning, foresight and futures literacy, and systematically promoting long-term and intergenerational thinking at all levels.”⁹⁴⁷

(7) Principle 22 (b) further provides that States should recognize the bodies established by Indigenous Peoples, peasants, and traditional and local communities (PLT communities) that have developed their own mechanisms to represent future generations. Principles 11 and 12, along with their Commentary, establish the rights of Indigenous Peoples and PLT communities, including respecting and supporting their decision-making processes. Additionally, these Principles recognize that Indigenous Peoples and PLT communities possess valuable insights and knowledge systems from which all generations can learn how to represent the human rights of future generations.⁹⁴⁸ A valuable example of integrating intergenerational thinking into decision-making processes is illustrated by the Future Design movement in Japan.⁹⁴⁹ This movement draws inspiration from Indigenous Peoples’ “seventh-generation principle” and has spearheaded innovative and distinctive approaches to citizens’ assemblies in various municipalities across Japan.⁹⁵⁰ In these assemblies, one group of participants represents the perspective of present-day residents, while the other group envisions themselves as “future residents” from the year 2060.⁹⁵¹

(8) Principle 22 (c) recognizes the unique position of children, youth, and adolescents in relation to future generations. It emphasizes that children should not be seen as “proxies” for future generations,⁹⁵² nor should their representations on behalf of future generations detract from their full participation and the realization of their rights in the here and now.⁹⁵³ However, as the Preamble of the Principles recognizes, because children, youth, and adolescents “are closest in

945. See Commentary, Princs. 8, 24, 26. See also JONATHAN BOSTON, *GOVERNING THE FUTURE: DESIGNING DEMOCRATIC INSTITUTIONS FOR A BETTER TOMORROW* (2017) (for an exposition of institutional designs for representing future generations on the national level).

946. U.N. Secretary-General, *Our Common Agenda*, at 45, U.N. Doc. A/75/982 (2021). For a consideration evaluating these proposals and how they can be strengthened, see Lawrence, *Representation of Future Generations*, *supra* note 928, at 92–97. See also 2024 UN Declaration on Future Generations, *supra* note 8, actns. 30–32. For a further possible development in repurposing the UN Trusteeship Council with an explicit shift away from “territory to the rights of the ‘peoples’” with the aim of representing future generations, see Bharat H. Desai, *The Repurposed UN Trusteeship Council for the Future*, 52 *Env’t Pol’y & L.* 223–35 (2022).

947. 2024 UN Declaration on Future Generations, *supra* note 8, actn. 31.

948. For a further exposition drawing from Indigenous Peoples conceptions of socio-ecological justice with valuable insights on representations acting on behalf of the rights of nature, see Lawrence, *Justifying Representation of Future Generations*, *supra* note 928, at 575–77.

949. Documented in KRZYNARIC, *GOOD ANCESTOR*, *supra* note 10, at 181–83.

950. *Id.* at 181.

951. *Id.* at 181–82.

952. Special Rapporteur on Human Rights Defenders, *Challenges Faced by Child and Youth Human Rights Defenders*, ¶ 7, U.N. Doc. A/HRC/55/50 (2024).

953. For the dangers of this approach in a litigation setting, see Nolan, *Vexed Question*, *supra* note 11, at 21–24.

time to generations still to come,” they “have an important role to play within this transition to long-term, multigenerational thinking.”⁹⁵⁴ Their perspectives and participation in decision-making related to long-term and intergenerational risks should therefore be given “special weight.”⁹⁵⁵ Edith Brown Weiss has indicated that children are the “first embodiment of the interests of future generations,”⁹⁵⁶ thereby underscoring the importance of their participation in decision-making processes. Commitment 11 of the Our Common Agenda of the UN similarly emphasizes that one of the key mechanisms to strengthen intergenerational solidarity between overlapping and non-overlapping generations is “to listen to and work with youth.”⁹⁵⁷ The UN General Assembly resolution 66/288 on the Future We Want also asserts:

We stress the importance of the active participation of young people in decision-making processes, as the issues we are addressing have a deep impact on present and future generations and as the contribution of children and youth is vital to the achievement of sustainable development. We also recognize the need to promote intergenerational dialogue and solidarity by recognizing their views.⁹⁵⁸

(9) The meaningful participation of children, youth, and adolescents is vital for the transition to long-term and multigenerational thinking, whether in terms of representing their own interests in their futures as adults (“living future generations”), as the immediate “overlapping” generation with constantly arriving generations, or as advocates for future generations of children, youth, and adolescents.⁹⁵⁹ There are a series of court cases in which children and youth have initiated litigation claiming violations of their rights, representing themselves as well as acting on behalf of future generations, illustrating that children and youth are attentive voices in understanding and advocating for the human rights of future generations. The Committee on the Rights of the Child’s General Comment 26 noted:

The children consulted reported on the negative effects of environmental degradation and climate change on their lives and communities. They asserted their right to live in a clean, healthy and sustainable environment: “The environment is our life.” “Adults [should] stop making decisions for the future they won’t experience. [We] are the key means [of] solving climate change, as it is [our] lives at stake.” “I would like to tell [adults] that we are the future generations and, if you destroy the planet, where will we live?!”⁹⁶⁰

The Committee recognized the principle of intergenerational equity and the interests of future generations to “which the children consulted overwhelmingly referred.”⁹⁶¹ The Committee also clarified that children are the “most significant future decision-makers for future generations,” deserving “special attention and a space at the table as important partners and stakeholders today to build peaceful, just, and inclusive societies, and ensure the lasting protection of the planet.”⁹⁶² The 2024 UN Declaration on Future Generations specifically recognizes “children and youth as agents of change and the need for intergenerational dialogue and engagement, including with and among children, youth and older persons, to be taken into consideration in our policy and

954. See *supra* Pmb. ¶ VII.

955. *Id.*

956. Edith Brown Weiss, *In Fairness to Our Children: International Law and Intergenerational Equity*, 2 *Childhood* 22, 22 (1994).

957. U.N. Secretary-General, *Our Common Agenda*, at 45, U.N. Doc. A/75/982 (2021).

958. G.A. Res. 66/288, *Future We Want*, ¶ 50, U.N. Doc. A/RES/66/288* (2012).

959. Nolan, *Vexed Question*, *supra* note 11.

960. Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶ 3.

961. *Id.* ¶ 11.

962. *Statement of the Committee on the Rights of the Child on Human Rights Day 2023: Children Should Be Recognized and Involved as Key Actors in the Summit of the Future*, ¶ 8 (Dec. 10, 2023), <https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/activities/crc-stm-hr-day-2023.pdf>.

decision-making processes in order to safeguard the needs and interests of future generations.”⁹⁶³ Accordingly, States must protect children’s rights to be heard and their other participatory rights, including when they advocate for human rights on behalf of themselves and future generations. The Committee on the Rights of the Child has emphasized that all processes involving children’s participation must be voluntary, respectful, and transparent, provide children with information suitable for their age, offer appropriate support based on their age and developmental stage, and actively encourage the participation of marginalized children.⁹⁶⁴ Similarly, for very young children and children with disabilities who cannot express their views or represent themselves in the same way as other children, States should take special measures to provide them with such opportunities, including, where appropriate, through representation.⁹⁶⁵

(10) Principle 22 (d) establishes that States must create accessible and inclusive bodies and institutions at all levels to ensure effective participation of representatives of future generations in decision-making. Institutions do not only refer to “bricks and mortar” institutional bodies but also to the laws, procedures, and rules under which institutional access for participation and representation operates.⁹⁶⁶ Principle 22 (d) therefore provides that States must ensure that institutions designed to represent future generations are diverse and inclusive by facilitating meaningful and effective participation of groups that are disadvantaged or have faced systemic discrimination. Ensuring that institutions and mechanisms representing future generations are diverse and inclusive is vital for achieving equitable representation, addressing the historical and systemic discrimination of disadvantaged groups, enhancing legitimacy, and incorporating diverse perspectives. Ensuring the participation of marginalized groups, such as women, children and youth, Indigenous Peoples, and people with disabilities, in advocating for the rights of future generations is essential for promoting the achievement of substantive equality.⁹⁶⁷ International human rights law standards mandate that duty bearers take special measures to overcome, as far as possible, the representational deficits and participative asymmetries that these groups encounter in relation to power structures silencing or marginalizing their voices.⁹⁶⁸

(11) Principle 22 (d) refers to mere examples of bodies and institutions within representative democratic institutions, as well as independent bodies and institutions with important accountability functions over representative democratic institutions and forums that must ensure that future generations’ rights are fulfilled. Principle 22 (d) requires that States establish institutions “at all levels,” across branches of government, encompassing the executive, legislature, and judiciary, as well as independent institutions.⁹⁶⁹ The 2024 UN Declaration on Future Generation advances a “whole-of-government approach” to ensure a differentiated and

963. 2024 UN Declaration on Future Generations, *supra* note 8, pmb. ¶ 7.

964. Comm. on Rts. Child, *General Comment No. 12*, *supra* note 934, ¶ 134.

965. Comm. on Rts. Child, *General Comment No. 14*, *supra* note 39, ¶ 44.

966. Lawrence, *Representation of Future Generations*, *supra* note 928, at 90. See also, generally Gideon B. Basson, *Procedural Justice as a Feature of Transformative Substantive Equality: Critical Notes on Social Justice Coalition v Minister of Police 2022 CC*, 141 S. Afr. L. J. 349–90 (2024); Sandra Liebenberg, *Participatory Justice in Social Rights Adjudication*, 18 Hum. Rts. L. Rev. 623–49 (2018).

967. 2024 UN Declaration on Future Generations, *supra* note 8, pmb. ¶ 7, guid. princ. 8, commits. 13, 16. See Commentary, Princ. 6.

968. See, e.g., CEDAW, *supra* note 33, pmb. ¶¶ 7, 12, arts. 7, 8; CRPD, *supra* note 33, pmb. ¶¶ (e), (k), (m), arts. 1, 3(c), 9(1), 19, 24(1)(c), 29, 30; UNDRIP, *supra* note 141, arts. 5, 14, 18.

969. Special Rapporteur on the Right to Development, *Children and Future Generations*, ¶ 83, U.N. Doc. A/HRC/57/43 (2024).

coordinated representation of future generations across all levels of government.⁹⁷⁰ These institutions should be carefully designed to influence decision-making by ensuring that representatives of future generations have access at all stages of the decision-making process.⁹⁷¹ Michael Rose argues that influence can be exerted through advice and consultation, independent policy and legislative recommendations and proposals, monitoring and review, and auditing.⁹⁷² Some of these institutions and their mechanisms must be legally guaranteed to ensure that the present generation's decision-making considers future generations' human rights, thereby preventing the present generation from disregarding the human rights of future generations.⁹⁷³ This may, for example, include review mechanisms, suspensive veto powers, or provisions enabling representative institutions to activate legal accountability.⁹⁷⁴ Principle 22 (d) also emphasizes that the design, structure, and legal frameworks of these institutions must guarantee their independence. This independence is crucial to ensuring that institutions representing the rights of future generations can protect these rights impartially and without external political or economic pressures.⁹⁷⁵

(12) There are various national examples where States have established offices that serve to represent future generations, such as ombudspersons, parliamentary commissioners, or advisory

970. 2024 UN Declaration on Future Generations, *supra* note 8, actn. 29.

971. Sandor Fulop, *The Institutional Representation of Future Generations*, in HUMAN RIGHTS AND SUSTAINABILITY: MORAL RESPONSIBILITIES FOR THE FUTURE 195–211 (Gerhard Bos & Marcus Düwell (2016) (for proposals on the effective design of such institutions).

972. Michael Rose, *Institutional Proxy Representatives of Future Generations: A Comparative Analysis of Types and Design Features*, 12 *Pol. & Governance* 1, 5 (2024).

973. *Id.* at 6.

974. *Id.* at 6, 11.

975. See, e.g., *National Institutions for the Promotion and Protection of Human Rights*, adopted Dec. 20, 1993, G.A. Res. 48/134, U.N. GAOR, 48th Sess., Agenda Item 114(b) pmb. ¶ 2, annex, *Principles Relating to the Status of National Institutions*, Composition and Guarantee of Independence and Pluralism, at 4–5, U.N. Doc. A/RES/48/134 (Mar. 4, 1994) [hereinafter Paris Principles on NHRIs]; *General Comment No. 13: The Right to a Fair Trial*, U.N. GAOR, Hum. Rts. Comm., 21st Sess., ¶¶ 3–4, U.N. Doc. HRI/GEN/1/Rev.1 (1984); *General Comment No. 10: The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 19th Sess., ¶ 2, U.N. Doc. E/C.12/1998/25 (1998).

councils, including in Hungary,⁹⁷⁶ Finland,⁹⁷⁷ New Zealand,⁹⁷⁸ Canada,⁹⁷⁹ Norway,⁹⁸⁰ and Libya.⁹⁸¹ However, many of these offices have had, or continue to have a limited role, focusing primarily on environmental and climate change issues impacting future generations. It is vital that these institutions also consider other rights of future generations. One example is Tunisia, where Article 28 of the 2014 Tunisian Constitution establishes a “Commission for Sustainable Development and the Rights of Future Generations,” which must be “consulted on draft laws related to economic, social, and environmental issues, as well as development plans.” Another prominent example of an institution representing a wide variety of rights of future generations is Wales’s “Future Generations Commissioner,” established under the Well-being of Future Generations Act.⁹⁸² This Commissioner is tasked with safeguarding the needs of future generations by ensuring that public bodies make sustainable decisions. The Act states that the Commissioner’s general duty is to:

- (a) to promote the sustainable development principle, in particular to –
 - (i) act as a guardian of the ability of future generations to meet their needs, and
 - (ii) encourage public bodies to take greater account of the long-term impact of the things that they do, and
- (b) for that purpose to monitor and assess the extent to which well-being objectives set by public bodies are being met.⁹⁸³

The Commissioner has wide-ranging functions, including providing assistance or advice to public bodies, conducting research, and exercising review and recommendation powers.⁹⁸⁴ Roman Krznaric illustrates how Commissioner Sophie Howe:

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976. Hung. Const. art. 13(2), Act XX of 1949 (rev. 2016). The Office of the Commissioner for Fundamental Rights establishes an “Ombudsman for Future Generations,” who handles public petitions, individual complaints; and its proposals, reports, and opinions have direct and indirect influence in national legislation, policy-making, and decision-making. See Jávör Benedek, *Institutional Protection of Succeeding Generations: Ombudsman for Future Generations in Hungary*, in HANDBOOK OF INTERGENERATIONAL JUSTICE 282–98 (Joerg C. Tremmel ed., 2006).
977. Finland’s Committee for the Future, established in 1993 as a parliamentary standing committee, discussed in Paula Tiihonen, *Power over Coming Generations: Committee for the Future in the Eduskunta, the Parliament of Finland*, in INTERGENERATIONAL JUSTICE IN SUSTAINABLE DEVELOPMENT TREATY IMPLEMENTATION: ADVANCING FUTURE GENERATIONS RIGHTS THROUGH NATIONAL INSTITUTIONS 395–410 (Marie-Claire Cordonier Segger et al. eds., 2021).
978. The Parliamentary Commissioner for the Environment is an independent officer of Parliament, providing oversight of environmental policies and practices to protect future generations, discussed in Jonathan Boston, *Parliamentary Commissioner for the Environment, New Zealand*, in INTERGENERATIONAL JUSTICE IN SUSTAINABLE DEVELOPMENT TREATY IMPLEMENTATION: ADVANCING FUTURE GENERATIONS RIGHTS THROUGH NATIONAL INSTITUTIONS 434–60 (Marie-Claire Cordonier Segger et al. eds., 2021).
979. See David Wright & James McKenzie, *The Canadian Commissioner of the Environment and Sustainable Development*, in INTERGENERATIONAL JUSTICE IN SUSTAINABLE DEVELOPMENT TREATY IMPLEMENTATION: ADVANCING FUTURE GENERATIONS RIGHTS THROUGH NATIONAL INSTITUTIONS 416–77 (Marie-Claire Cordonier Segger et al. eds., 2021).
980. Norwegian Ombudsman for Children and its work in relation to future generations discussed in Ole K. Fauchald & Elisabeth Gording Stang, *Norway: Norwegian Ombudsman for Children*, in INTERGENERATIONAL JUSTICE IN SUSTAINABLE DEVELOPMENT TREATY IMPLEMENTATION: ADVANCING FUTURE GENERATIONS RIGHTS THROUGH NATIONAL INSTITUTIONS 352–73 (Marie-Claire Cordonier Segger et al. eds., 2021).
981. Libya Draft Const. art. 173 (2016) (establishing a “Body of Sustainable Development” with an explicit mandate of “Assessing development plans and how to implement them in light of the indicators of sustainable and balanced development and the need for maintaining the rights of future generations”).
982. Well-being of Future Generations (Wales) Act 2015, c. 2 (U.K.).
983. *Id.* art. 18.
984. *Id.* arts. 19–25.

managed to catapult future generations issues into the mainstream of public debate. Her opposition to the £1.6 billion . . . extension of the M4 motorway, on the grounds that it was a “twentieth-century solution” that failed to promote a low-carbon society, was considered instrumental in scrapping the scheme. She has also been a vocal advocate of preventive health care, arguing that the National Health Service is really a “national illness service” when it should be a “national well-being service.” While it can be tough to convince today’s voters to allocate their taxes to benefit tomorrow’s citizens, Howe has pragmatically focused on issues like health care and the environment where the benefits accrue to both current and future generations.⁹⁸⁵

(13) The introduction of designated or reserved parliamentary seats for special representatives of future generations is a promising option to ensure continuity within legislatures by establishing a specific, permanent representative role for future generations elected by the voting community to advocate for the human rights of future generations.⁹⁸⁶ Kristian Ekeli argues that these representatives should possess the same powers as ordinary legislators, such as voting for or against policies and laws that impact the rights of future generations or introducing framework laws and policies on their behalf.⁹⁸⁷ Kristian Ekeli has also proposed a “sub-majority” rule model, where “minorities of legislators, who are selected and accountable through ordinary periodic elections, are given certain political tools to represent and protect the human rights of future generations—for example, by having the power to delay legislative enactments that may impact the human rights of future generations, and to request further consideration and deliberation.”⁹⁸⁸ Although examples of designated seats or special parliamentary rules to ensure the safeguarding of the human rights of future generations are limited,⁹⁸⁹ some countries have designated seats reserved for representing youth constituencies, with some also having the role of representing future generations. Several countries have instituted “youth quotas” in electoral laws or youth participation in legislative processes, including New Zealand, Uganda, Kenya, Rwanda, Philippines, Morocco, and Tunisia.⁹⁹⁰ While youth play an important representative role in advocating for the human rights of future generations, States must explicitly recognize that these seats should also represent future generations, or establish separate seats dedicated to this purpose. As Juliane Bidadanure argues, youth quotas in parliament are important for ensuring justice between overlapping generations, thereby contributing to intragenerational justice as a component of intergenerational justice. However, they are “sub-optimal, at least as a tool of justice between non-overlapping generations.”⁹⁹¹

985. KRZARNIC, GOOD ANCESTOR, *supra* note 10, at 177–78.

986. Kristian S. Ekeli, *Electoral Design, Sub-Majority Rules, and Representation for Future Generations*, in INSTITUTIONS FOR FUTURE GENERATIONS 214–77 (Iñigo González-Ricoy & Axel Gosseries eds., 2016).

987. *Id.* at 216–17.

988. *Id.* at 219–22.

989. For a discussion of the dangers of non-explicit designated seats for future generations, and some recommendations for doing so, see Lucy Kinski & Kerry Whiteside, *Of Parliament and Presentism: Electoral Representation and Future Generations in Germany*, 32 *Env’t Pol.* 21–42 (2023); Daan Vermassen et al., *Speaking for the Voiceless? Representative Claims-Making on Behalf of Future Generations in Belgium*, 76 *Parl. Aff.* 579–99 (2023).

990. Discussed in Juliane Bidadanure, *Youth Quotas, Diversity, and Long-Termism: Can Young People Act as Proxies for Future Generations?*, in INSTITUTIONS FOR FUTURE GENERATIONS 214–77 (Iñigo González-Ricoy & Axel Gosseries eds., 2016); Org. Econ. Co-operation & Dev. (OECD), *Governance for Youth, Trust and Intergenerational Justice: Fit for All Generations?*, OECD Pub. Governance Revs. 121–22 (2020); U.N. Dev. Prgm. (UNDP), *Enhancing Youth Political Participation throughout the Electoral Cycle: A Good Practice Guide*, 20–23 (Oct. 30, 2015).

991. Bidadanure, *Youth Quotas*, *supra* note 990, at 275.

(14) Principle 22 (d) also refers to important institutions such as national tribunals to protect Nature, which would include specialized land and environmental courts.⁹⁹² India, for instance, has a National Green Tribunal,⁹⁹³ a specialized body that handles cases related to environmental protection, conservation of forests, and other natural resources. It has the authority to enforce legal rights related to the environment and provide relief and compensation for environmental harms.⁹⁹⁴ Another crucial institution is national human rights institutions (NHRIs), which must play a vital role in promoting and monitoring the effective implementation of the human rights of future generations at the national level. These institutions often have investigative, inquisitorial, and educational functions, all of which are vital for the institutional representation of the human rights of future generations.⁹⁹⁵ An example is the Philippines' Commission on Human Rights. In its 2022 National Inquiry on Climate Change, the Commission found that the world's largest greenhouse gas emitters, known as the Carbon Majors, engaged in willful obfuscation of climate science, contributing to climate change and violating the human rights of present and future generations.⁹⁹⁶ The Commission concluded that these corporations could be held accountable for human rights violations resulting from climate change, including those affecting future generations.⁹⁹⁷

(15) Principle 22 (e) reaffirms the legal obligation of States to take steps to provide adequate and effective measures to guarantee the rights of individuals or groups working to protect or promote human rights,⁹⁹⁸ including the rights of future generations. Adequate and effective measures must be put in place for individuals and groups, including women,⁹⁹⁹ children and youth,¹⁰⁰⁰ Indigenous Peoples, and environmental and human rights defenders.¹⁰⁰¹ For example, Indigenous Peoples frequently operate in high-risk contexts and face pervasive violence, intimidation, and abuse when protecting their traditional lands, territories, and cultures, which are held in trust, preserved, and protected for future generations against powerful State and business interests in development projects.¹⁰⁰²

992. *E.g.*, Env't & Land Ct. (Kenya), established under the Env't & Land Ct. Act No. 19 of 2011 (Kenya); Land & Env't Ct. (N.S.W.), established under the Land & Env't Ct. Act No. 204 (1979) (Austl.).

993. Established in 2010 under the Nat'l Green Trib. Act No. 19 of 2010, India Code (2010).

994. *Id.* arts. 14–25.

995. For an elaboration of the role of NHRIs in the context of the human rights of future generations with country-specific examples, see Saionara König-Reis et al., *National Human Rights Institutions as a Driving Force for Sustainable Development: Good Practices for SDG Programming and Monitoring*, Danish Inst. for Hum. Rts., at 13, 16–17, 21 (2019).

996. Comm'n on Hum. Rts. of the Phil., *National Inquiry on Climate Change Report*, 66–9, 128–32 (2022).

997. *Id.* at 128–32, 152–60.

998. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, *adopted* Dec. 9, 1998, G.A. Res. 53/144, U.N. GAOR, 53d Sess., Agenda Item 110(b), U.N. Doc. A/RES/53/144 (Mar. 8, 1999) [UN Declaration on the Right and Responsibility to Promote and Protect Human Rights].

999. *See, e.g.*, *General Recommendation No. 33: On Women's Access to Justice*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 63rd Sess., ¶¶ 9, 15(i), U.N. Doc. CEDAW/C/GC/33 (2015); Comm. on Elim. Discrim. Against Women, *General Recommendation No. 34*, *supra* note 511, ¶ 25(e).

1000. Special Rapporteur on Human Rights Defenders, *Challenges Faced by Child and Youth Human Rights Defenders*, U.N. Doc. A/HRC/55/50 (2024).

1001. *Report of the Special Rapporteur on Human Rights Defenders, Environmental Human Rights Defenders*, Michel Forst, U.N. GAOR, 71st Sess., Agenda Item 69(b), U.N. Doc. A/71/281 (Aug. 3, 2016).

1002. *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Attacks and Criminalization of Indigenous Human Rights Defenders*, Victoria Tauli-Corpuz, U.N. H.R.C., 38th Sess., Agenda Item 3, U.N. Doc. A/HRC/39/17 (Aug. 10, 2018).

(16) Adequate and effective measures entail protection against human rights abuses, including those perpetrated by business enterprises and their subsidiaries across jurisdictions.¹⁰⁰³ Such protection must ensure freedom from attacks, threats, intimidation, retaliation, stigmatization, or criminalization.¹⁰⁰⁴ Appropriate measures include prevention, investigations, and the punishment and redress of such abuses through effective regulation, legal safeguards, and awareness-raising.¹⁰⁰⁵ These protections must be adequately and effectively implemented both offline and online.¹⁰⁰⁶

23. *Access to Information*

- a) *States must make every effort to ensure easy, prompt, effective and practical access to comprehensible information about issues that may affect the human rights of future generations, including by proactively making this information available. They must also put in place procedures that provide representatives of future generations with the right to seek and receive such access to information, and ensure transparency about decisions reached.*
- b) *Fees, where charged, should not constitute an unreasonable impediment to access to information, and an appeals system should be in place to challenge failures to provide information.*
- c) *States must provide and disseminate information on matters that are important for the effective protection of the human rights of future generations, such as environmental and climate related information, information on intergenerational toxic, chemical and radiological hazards, technological developments and scientific research. They must respect, protect, and fulfill the freedom to seek, receive, publish and disseminate such information.*
- d) *States must ensure disclosure of information necessary to fully and properly identify State and non-State actors that may be responsible for human rights impacts on future generations.*
- e) *Information should be provided in languages used by affected peoples, groups and communities, in alternative formats, and through suitable channels of communication that are accessible to disadvantaged groups. Information must also be disseminated in an accessible manner for persons with disabilities, including through braille and other assistive technologies.*
- f) *States must refrain from the dissemination of false and misleading information on issues that are important for the protection of the human rights of future generations including, but not limited, to climate change, the implications of technological developments, and scientific research. They must counter and, where appropriate, prevent dissemination of such misinformation by other actors. They should regulate and address conflicts of interest that undermine the right to information.*

1003. *Protecting Human Rights Defenders, Whether Individuals, Groups or Organs of Society, Addressing Economic, Social and Cultural Rights*, H.R.C. Res. 31/32, adopted Mar. 24, 2016, U.N. H.R.C., 31st Sess., Agenda Item 3, ¶¶ 15, 17–18, U.N. Doc. A/HRC/RES/31/32 (Apr. 20, 2016).

1004. UN Declaration on the Right and Responsibility to Promote and Protect Human Rights, *supra* note 998, arts. 1, 12–13.

1005. *Protecting Human Rights Defenders*, H.R.C. Res. 31/32, ¶¶ 6, 10, 19, U.N. Doc. A/HRC/RES/31/32 (2016).

1006. *Implementing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through Providing a Safe and Enabling Environment for Human Rights Defenders and Ensuring Their Protection*, adopted Dec. 19, 2023, G.A. Res. 78/216, U.N. GAOR, 78th Sess., Agenda Item 71(b), ¶¶ 11, 21, U.N. Doc. A/RES/78/216 (Dec. 22, 2023).

Commentary

(1) Principle 23 recognizes access to information as a fundamental human right and a crucial enabler for the protection of the rights of future generations. It builds upon established international human rights law, including Article 19 of the UDHR and Article 19 of the ICCPR, which enshrine the right to seek, receive and impart information.¹⁰⁰⁷ This Principle clarifies the scope of this right as a right held by future generations, stipulating how it encompasses information that may affect the human rights of future generations and acknowledging the intergenerational dimension of access to information.

(2) The obligation to respect, protect, and fulfill the freedom to seek, receive, publish, and disseminate information related to future generations' rights reflects the multi-faceted nature of the right to information. It requires States not only to provide information but also to create an enabling environment where information can be freely shared and discussed.¹⁰⁰⁸ The obligation to ensure easy, prompt, effective, and practical access to information, as stipulated in Principle 23 (a), is an essential component of the right to freedom of expression. The Human Rights Committee has authoritatively confirmed that States must take proactive legislative and policy measures to fulfill this obligation.¹⁰⁰⁹ Principle 23 applies this obligation specifically to

1007. UDHR, *supra* note 29; ICCPR, *supra* note 14. Other human rights treaty sources include CRC, *supra* note 12, art. 13; American Convention on Human Rights, *supra* note 81, art. 13; African Charter, *supra* note 144, art. 9(1); European Convention on Human Rights, *supra* note 204, art. 10. See also Brisbane Declaration: Freedom of Information: The Right to Know, *adopted* May 3, 2010, UNESCO World Press Freedom Day Conf., UNESCO Doc. CI-2011/WS/1 Rev. (2011); Maputo Declaration on Fostering Freedom of Expression, Access to Information and Empowerment of People, *adopted* May 3, 2008, UNESCO Conf. (n.p). Over the years, specific treaties have further developed the right to information. *E.g.*, United Nations Convention against Corruption, *adopted* Oct. 31, 2003, G.A. Res. 58/4, U.N. GAOR, 58th Sess., Agenda Item 108, U.N. Doc. A/RES/58/4 (Nov. 21, 2003) (*entered into force* Dec. 14, 2005) [hereinafter Convention Against Corruption] (imposes key obligations regarding transparency and openness, specifically requiring States Parties to establish mechanisms to ensure access to information (*id.* arts. 10, 13), to provide and disseminate information on matters that are vital to control corruption, such as public procurement, public-sector employment, public finance, and conflict of interest regulation (*id.* arts. 9(1)(a), 9(2)), to ensure the public has “effective access to information” and to respect, promote and protect the “freedom to seek, receive, publish and disseminate information concerning corruption,” subject to the restrictions provided for by international law (*id.* art. 13), and to promote corporate openness (*id.* art. 12(2)(c)); Aarhus Convention, *supra* note 932. At the regional level, see, *e.g.*, Council of Europe Convention on Access to Official Documents art. 10, *adopted* June 18, 2009, Council of Eur., C.E.T.S. No. 205 (*entered into force* Dec. 1, 2020) (recognizes a general right of access to official documents held by public authorities and contains the most robust provision in international treaties related to the proactive disclosure of information); Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, *adopted* Mar. 4, 2018 E.C.L.A.C., U.N. Doc. LC/PUB.2018/8 (*entered into force* Apr. 22, 2021) [hereinafter Escazú Agreement]. In addition to international and regional treaties, several jurisdictions worldwide include the right to information in their constitutions, while in others, courts have interpreted the right to freedom of expression as encompassing this right. See, *e.g.*, Bulg. Const. art. 41, 1991; Est. Const. art. 44, OCW CD 1017 (EE), 1992; Hung. Const. art. 61(1), Act XX of 1949 (rev. 2016); Lith. Const. art. 25(5), 1992; Malawi Const. art. 37, 1994; Const. United Mexican States art. 6, as amended, Diario Oficial de la Federación [D.O], Feb. 5, 1917 (Mex.); Phil. Const. art. III, § 7, 1987; Pol. Const. art. 61, 1997; Rom. Const. art. 31, 1991; S. Afr. Const. § 32, 1996; Thai. Const. § 56, B.E. 2550 (2007). Many states have adopted access to information laws (AIL), also known as “freedom of information” (FOI) laws, but the preferred term today is the right of access to information. See TOBY MENDEL, FREEDOM OF INFORMATION: A COMPARATIVE LEGAL SURVEY 22 (2d ed., 2008).

1008. *E.g.*, Comm. on Rts. Child, *General Comment No. 26, supra* note 78, ¶¶ 27, 32–34, 44, 70, 103.

1009. Hum. Rts. Comm., *General Comment No. 34, supra* note 39, ¶¶ 18–19. See also *Reyes v. Chile*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151, ¶¶ 77, 174 (Sept. 19, 2006) (clarifying the scope and content of the right to information and stipulating remedies for its violation); *Lund v. Braz.*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 186, ¶¶ 199, 230 (Nov. 24, 2010) (emphasizing that in democratic societies, legislation, as well as States' procedures, must be re-governed by the principles of good faith and maximum disclosure in a way that all information in State power is presumed public and accessible, subject to a limited regime of exceptions.

information that may affect the human rights of future generations, recognizing the need for long-term thinking in information dissemination and accessibility. The proactive dissemination of information, as emphasized in Principle 23 (a), is particularly important in the context of future generations. It requires States to anticipate and address information needs that may not yet be apparent but could be crucial for protecting the rights of future generations. This proactive approach aligns with Principle 9 on Prevention and Precaution,¹⁰¹⁰ and the need for foresight in environmental and climate-related decision-making, as highlighted in the 2024 report of the Special Rapporteur on climate change and human rights, Elisa Morgera, regarding access to information on climate change and human rights.¹⁰¹¹ The report remarks:

Access to information is also acutely needed about the experimenting, testing and deployment of climate mitigation technologies, notably geoengineering, and about the early identification of potential risks to human life or health, serious and effectively irreversible impacts on the environment, and inequitable impacts on present or future generations. Risk assessments should account for the limited existing research on the social and cultural impacts of carbon capture, storage or removal technologies, with marine carbon dioxide removal lagging behind in particular, and for the dependence of cost-benefit analysis on access to expensive global climate change monitoring and modelling.¹⁰¹²

(3) The requirement to put procedures in place for future generations' representatives to seek and receive information, as stated in Principle 23 (a), recognizes the unique challenges in representing the interests of those who cannot yet speak for themselves. This may involve establishing specialized bodies or extending standing to organizations dedicated to protecting future interests.¹⁰¹³ In relation to the long-term threats AI poses to human rights, the Council of Europe Framework Convention on Artificial Intelligence stipulates that each State Party should adopt:

measures to ensure that relevant information regarding artificial intelligence systems which have the potential to significantly affect human rights and their relevant usage is documented, provided to bodies authorised to access that information and, where appropriate and applicable, made available or communicated to affected persons.¹⁰¹⁴

Transparency in decision-making processes, as also mentioned in Principle 23 (a), is crucial for ensuring accountability and allowing for scrutiny of decisions that may have long-term consequences. This transparency obligation extends to both public and private actors whose activities may significantly impact future generations, including in areas such as climate change, biodiversity loss, and technological developments.¹⁰¹⁵

Moreover, all denials of information must be motivated and founded, and the State is responsible for the burden of proof on the impossibility of presenting said information). See also MENDEL, FREEDOM OF INFORMATION, *supra* note 1007, at 8.

1010. See Commentary, Princ. 9.

1011. *Report of the Special Rapporteur on Climate Change and Human Rights, Access to Information on Climate Change and Human Rights*, Elisa Morgera, U.N. GAOR, 79th Sess., Agenda Item 71(b), U.N. Doc. A/79/176 (July 18, 2024).

1012. *Id.* ¶ 19 (citations omitted).

1013. See Commentary, Princ. 22(d).

1014. Council of Eur. Framework Convention on Artificial Intelligence, *supra* note 740, art. 14(2)(a). See also *Final Report: Governing AI for Humanity*, ¶¶ 87–100 (2024).

1015. See, e.g., *Report of the Special Rapporteur on the Right to Food, Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements*, Olivier De Schutter, U.N. H.R.C., 19th Sess., Agenda Item 3, princ. 4, U.N. Doc. A/HRC/19/59/Add.5 (Dec. 19, 2011) [hereinafter *Guiding Principles on HRIAs of Trade & Investment Agreements*]; ITPGRFA, *supra* note 402, art. 17.

(4) The provision in Principle 23 (b) regarding fees for information requests aims to remove financial barriers that could impede access to critical information.¹⁰¹⁶ This is particularly important for ensuring equitable access across generations and socio-economic groups.¹⁰¹⁷ The requirement for an appeals system reflects the need for effective remedies and oversight in information access processes.¹⁰¹⁸

(5) Principle 23 (c) outlines specific categories of information that States must provide and disseminate, recognizing areas of particular relevance to future generations. This includes environmental and climate-related information, which is critical given the long-term and potentially irreversible character of many environmental changes.¹⁰¹⁹ This reflects obligations under the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and the Regional Agreement on Access to Information,¹⁰²⁰ Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)¹⁰²¹ and parallel obligations under customary international law,¹⁰²² and further aligns with recommendations of Elisa Morgera, the Special Rapporteur on climate change and human rights.¹⁰²³ States must also provide information on intergenerational toxic, chemical, and radiological hazards, acknowledging the potential for these substances to affect multiple generations. This obligation is informed by best practices such as the IAEA's guidance on records for radioactive waste management, which emphasizes the need to preserve information for future generations about potential long-term radiological hazards.¹⁰²⁴ Further, States must provide information on technological developments and scientific research, recognizing the rapid pace of change and the potential for technologies to have far-reaching implications for future societies. This is in line with the Committee on Economic, Social and Cultural Rights' General Comment 25, which views access to "information

1016. Several access to information laws contain safeguards to avoid vexatious or unreasonable requests or to ensure that the amount of time and resources that a public authority has to expend in responding to a request is not out of proportion to that request's value and purpose (see, e.g., FOI Act 2000, c. 36, §§ 12, 14 (U.K.); Law on Transparency of Public Service and Access to Information of the Public Administration art. 17, L. No. 20.285 (2008) (Chile). This reflects a general principle of law that fees charged should not constitute an unreasonable impediment to access to information.

1017. See also, e.g., Hum. Rts, Comm., *General Comment No. 34*, *supra* note 39, ¶ 50.

1018. *Id.*

1019. See, e.g., *Climate Emergency Scope of Inter-American Human Rights Obligations*, adopted Dec. 31, Res. 3/2021, Inter-Am. Comm'n H.R., ¶¶ 32–35, OEA/Ser.L/V/II. doc. 52 (2021); *LIDHO v. Côte d'Ivoire*, App. No. 041/2016, Afr. Ct. H.P.R., ¶¶ 197–99 (2023); *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 342, 354 (2023).

1020. Aarhus Convention, *supra* note 932.

1021. Escazú Agreement, *supra* note 1007.

1022. E.g., Rio Declaration on Environment and Development, *supra* note 97, princ. 10; UNFCCC, *supra* note 98, art. 6(a)(ii); Paris Agreement, *supra* note 99, pmb. ¶ 11, arts. 7(7)(b), 11(1), 12, 13(7); Basel Convention, *supra* 1007, pmb., art. 2; Convention on Long-Range Transboundary Air Pollution arts. 3, 4, 8, adopted Nov. 13, 1979, 1302 U.N.T.S. 217 (entered into force Mar. 16, 1983); Convention on Biological Diversity, *supra* note 96, art. 14; Watercourses Convention, *supra* note 413, art. 11.

1023. Special Rapporteur on Climate Change and Human Rights, *Access to Information on Climate Change and Human Rights*, U.N. Doc. A/79/176 (2024).

1024. Int'l Atomic Energy Agency, *Records for Radioactive Waste Management Up to Repository Closure: Managing the Primary Level Information (PLI) Set*, IAEA-TECDOC-1398, at 1, 17 (2004).

concerning the risks and benefits of science” as part of the core content of the right to participate in and to enjoy the benefits of scientific progress.¹⁰²⁵

(6) Principle 23 (d) addresses the need for transparency regarding actors responsible for human rights impacts on future generations. In *Habitantes de La Oroya v. Peru* before the Inter-American Court of Human Rights, the Court held that access to information includes an obligation of “active transparency.”¹⁰²⁶ The Court indicated that active transparency obligates States and non-State actors to both respond to requests for accessing environmental information and proactively distribute and publicize environmental information.¹⁰²⁷ The Court further held that access to environmental information must be “complete” and “understandable” in an accessible language.¹⁰²⁸ Principle 23 (d) applies to both State and non-State actors, recognizing the significant role that private entities, particularly corporations, play in shaping future conditions. This aligns with the UNGPBHR¹⁰²⁹ and emerging standards on corporate climate disclosure.¹⁰³⁰

(7) The components in Principle 23 (e) on accessibility of information reflect the need to ensure that information reaches all segments of society, including future generations. This includes providing information in languages used by affected peoples, groups, and communities, recognizing linguistic diversity, and the right of future generations to maintain their cultural and linguistic heritage.¹⁰³¹ It also involves using alternative formats and suitable channels of communication, acknowledging diverse needs and potential future changes in information technology. Furthermore, it emphasizes ensuring accessibility for persons with disabilities, which is in line with the CRPD¹⁰³² and Principle 6 on Equality and Non-Discrimination.¹⁰³³

(8) Principle 23 (f) addresses the critical issue of misinformation and disinformation. The obligation for States to refrain from disseminating false and misleading information and to counter such misinformation from other actors, is crucial for ensuring that decisions affecting future generations are based on accurate and scientific information.¹⁰³⁴ The 2024 Global Digital Compact, adopted with the 2024 Pact for the Future, includes as one of its objectives the aim to

1025. *General Comment No. 25, supra* note 39, ¶ 17. See also *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Green financing – A Just Transition to Protect the Rights of Indigenous Peoples*, José F. Calí Tzay, U.N. H.R.C., 54th Sess., Agenda Item 3, ¶¶ 60, 61, 77(c), (k), U.N. Doc. A/HRC/54/31 (July 21, 2023).

1026. *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 146, 247 (2023).

1027. *Id.* ¶ 247.

1028. *Id.* ¶ 255.

1029. *Working Group on Business and Human Rights, Corporate Influence in the Political and Regulatory Sphere*, ¶ 99(e), U.N. Doc. A/77/201 (2022).

1030. UNGPBHR, *supra* note 791, princ. 21. See also Special Rapporteur on the Human Right to a Healthy Environment, *Good Practices*, ¶¶ 18, 42, 72, U.N. Doc. A/HRC/43/53 (2019); *Interim Report of the Special Rapporteur on the Right to Food, Food Systems and Human Rights*, Michael Fakhri, U.N. GAOR, 76th Sess., Agenda Item 75(b), ¶ 94, UN Doc. A/76/237 (July 27, 2021); *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 342 (2023).

1031. *E.g.*, UNDRIP, *supra* note 141, art. 11.

1032. See Commentary, Princ. 6.

1033. CRPD, *supra* note 33, art. 21; *General Comment No. 2: Accessibility*, U.N. GAOR, Comm. on Rts. People with Disabilities, 11th Sess., ¶ 2, U.N. Doc. CRPD/C/GC/2 (2014); Comm. on Rts. People with Disabilities, *General Comment No. 3, supra* note 781, ¶ 40; *General Comment No. 7: Participation with Persons with Disabilities in the Implementation and Monitoring of the Convention*, U.N. GAOR, Comm. on Rts. People with Disabilities, 20th Sess., ¶¶ 40, 84, U.N. Doc. CRPD/C/GC/7 (2018).

1034. *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Sustainable Development And Freedom Of Expression: Why Voice Matters*, Irene Khan, U.N. H.R.C., 53d Sess., Agenda Item 3, ¶¶ 84–90, UN Doc. A/HRC/53/25 (Apr. 19, 2023).

ensure “information integrity,” particularly because “access to relevant, reliable and accurate information and knowledge is essential for an inclusive, open, safe and secure digital space.”¹⁰³⁵ The Compact highlighted that digital and emerging technologies have the potential to manipulate and interfere with information integrity, undermining the enjoyment of human rights.¹⁰³⁶ The UN Secretary-General’s Advisory Body on AI, in its Final Report on Governing AI for Humanity, highlighted the threats posed by AI-generated misinformation, disinformation, and deepfakes to “information integrity,” including serious risks to “democratic institutions and processes such as elections, and to democratic societies and social trust more generally, including through foreign information manipulation and interference.”¹⁰³⁷ The Committee on Economic, Social and Cultural Rights has emphasized that part of the obligation to respect the right to participate in and to enjoy the benefits of scientific progress requires States to refrain from “disinformation, disparagement or deliberate misinformation intended to erode citizen understanding of and respect for science and scientific research.”¹⁰³⁸ The requirement in Principle 23 (f) to regulate and address conflicts of interest that undermine the right to information recognizes the potential for short-term interests to override long-term considerations. This is particularly relevant in areas such as climate change and AI policies, where there may be tension between immediate economic interests and the long-term well-being of future generations.

(9) Throughout Principle 23, there is an implicit recognition of the evolving nature of information needs and technologies. States must continually assess and adapt their information practices to ensure they remain effective in protecting the rights of future generations in a changing world. This includes considering emerging issues such as AI, big data, and new forms of environmental monitoring that may provide crucial insights for long-term decision-making. In implementing Principle 23, States should consider establishing specialized mechanisms for preserving and transmitting critical information to future generations. This could include initiatives similar to the primary level information set for radioactive waste management,¹⁰³⁹ adapting such approaches to other areas of long-term significance such as climate change data, biodiversity records, and information on critical infrastructure and resources. Finally, Principle 23 implicitly recognizes the global nature of many challenges facing future generations. States should therefore cooperate internationally to ensure comprehensive and consistent access to information that transcends national boundaries, particularly in areas such as climate change, biodiversity conservation, and global health risks that will affect future generations worldwide.¹⁰⁴⁰

24. *Extraterritorial Obligations*

- a) *States have obligations toward future generations who will exist within their territory and outside their borders. These arise on the basis of:*

1035. 2024 Global Digital Compact, *supra* note 724, ¶ 33.

1036. *Id.*

1037. *Final Report: Governing AI for Humanity*, at 35, ¶ 87–100 (2024).

1038. *General Comment No. 25*, *supra* note 39, ¶¶ 42, 52.

1039. Int’l Atomic Energy Agency, IAEA-TECDOC-1398, at 1, 17 (2004).

1040. See, e.g., Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 62; *Report of the Special Rapporteur in the Field of Cultural Rights, The Right to Enjoy the Benefits of Scientific Progress and Its Applications*, Farida Shaheed, U.N. H.R.C., 20th Sess., Agenda Item 3, ¶ 22, U.N. Doc. A/HRC/20/26 (May 14, 2012). See Commentary, Princ. 24.

- i. *obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory; and*
- ii. *obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally.*
- b) *States must take all appropriate legal, political, economic and diplomatic measures to refrain from conduct that would create a reasonably foreseeable risk of impairing the enjoyment of human rights by future generations, including outside their territory. They must regularly conduct assessments of the extraterritorial impacts of their laws, policies and practices.*
- c) *States must prevent corporations and other non-state actors under their jurisdiction from engaging in conduct domestically or outside their borders that would create a reasonably foreseeable risk of impairing the enjoyment of human rights by future generations, including outside their territory. States should provide effective judicial or other State-based mechanisms to hold corporations and other non-state actors legally accountable for such violations.*
- d) *States must, individually and jointly, take deliberate, specific, and targeted measures in decisions and international agreements to create an international enabling environment conducive to protecting the rights of present and future generations. Such measures must include economic, social and environmental and climate-related measures. These measures must be taken in accordance with equity and common but differentiated responsibilities and respective capabilities.*
- e) *States must ensure that international trade and investment agreements are applied and interpreted in a manner consistent with the human rights of future generations, and where necessary to realize these rights, terminate, amend or withdraw from existing agreements. Consistency between trade and investment agreements and human rights obligations requires that the former be designed, implemented, applied and interpreted in a manner that does not undermine or restrict the State's capacity to fulfill their human rights obligations. They have the duty to notify, consult and negotiate with other States in situations where there is a substantial and foreseeable risk of violating the human rights of future generations.*
- f) *States have an obligation to provide international assistance commensurate with their capacities, resources and influence, and to cooperate with each other, to ensure respect for, and the protection and fulfillment of, the human rights of future generations, as established in the Charter of the United Nations and in international human rights treaties.*
- g) *States in a position to do so should individually and collectively take steps to prevent and resolve unsustainable State debt (including, as appropriate, through unconditional debt relief) owed by other States that will infringe the human rights of future generations.*
- h) *States in a position to do so should provide international assistance, including financial, technological, and other forms of assistance, to contribute to the realization of human rights of present and future generations.*
- i) *International assistance should not undermine national development strategies or policies and domestic accountability mechanisms and procedures and must observe international human rights standards, including the right to self-determination, the right to participate in decision-making, and the protection of the human rights of future generations.*
- j) *States providing aid and those receiving it should be accountable to present and future generations for their actions and the results of their interventions. This requires that mechanisms are created for representatives of future generations to participate in decision-making about international assistance, and to seek remedy and redress on behalf of future generations.*

(1) The Commentary to the Maastricht Principles on ETOs explains the legal basis for extraterritorial obligations (ETOs) of States and their scope.¹⁰⁴¹ The Commentary on Principle 24 of the Maastricht Principles on Future Generations expands the exposition of the Principles and the Commentary of the Maastricht Principles on ETOs as it relates to the rights of future generations.¹⁰⁴² Specifically, Principle 24 (a) of the Maastricht Principles on Future Generations restates the general definition of ETOs as contained in Principle 8 of the Maastricht Principles on ETOs, aligned with the rights of future generations, stipulating that States have obligations toward future generations who will exist within their territory and outside their borders. As Fons Coomans et al. assert, this obligation derives from the “common concern of humankind.”¹⁰⁴³ The ETOs of States toward future generations arise on the basis of two distinct sources of human rights obligations as contained in either Principle 24 (a) (i) or (ii), or both simultaneously. Principle 24 (a) (i) establishes that ETOs are triggered when the conduct of a State, whether in the form of acts or omissions, within or beyond its territory, has effects on the enjoyment of the human rights of future generations outside of the State’s territory. Principle 24 (a) (ii) provides for obligations of a global character set out in the UN Charter and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights for present and future generations, as set out below.

(2) According to Principle 24 (a) (i), States may be held responsible for the human rights violations of future generations taking place beyond their territory. International human rights bodies, as well as the International Court of Justice, have recognized that extraterritorial obligations are triggered where a State has effective control over territory or people outside its sovereign territory, where it is in a position to harm the rights of people outside its borders, or is in a position to regulate private actors whose conduct can impact the rights of people outside their borders.¹⁰⁴⁴ These judicial and quasi-judicial bodies have also recognized ETOs both in regard to human rights treaties that stipulate that the obligations contained therein are restricted to States Parties’ jurisdiction and in relation to treaties that are silent on their jurisdictional reach.¹⁰⁴⁵ For instance, the Inter-American Court of Human Rights¹⁰⁴⁶ and human rights bodies of the African system¹⁰⁴⁷ have recognized that extraterritorial obligations apply with regard to every person who is in any

1041. *Maastricht Principles on ETOs*, *supra* note 1 (specifically as developed in Princs. 8, 15, 17, 19–38).

1042. See Commentary, Princ. 14, ¶¶ 1–2.

1043. Coomans et al., *Filling Gaps*, *supra* note 4, at 466.

1044. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 40–47; Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶¶ 22, 63; Comm. on Rts. Child, *General Comment No. 16*, *supra* note 75, ¶¶ 40, 43–44; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 28*, *supra* note 284, ¶ 12; *Joint Statement on Human Rights and Climate Change*, ¶¶ 3, 10, U.N. Doc. HRI/2019/1 (2020); Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georg. v. Russ.), Provisional Measures, Order, 2008 I.C.J. 353, ¶¶ 109, 149 (Oct. 15); Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶ 220 (Dec. 19).

1045. E.g., ICCPR, *supra* note 14, art. 2(1) and CRC, *supra* note 12, art. 2(1) contain jurisdictional clauses, whereas the ICESCR, *supra* note 14, CEDAW, *supra* note 33, and CRPD, *supra* note 33, are silent on jurisdictional reach.

1046. Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., ¶ 73; *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 31 (2023) (concurring opinion by Pérez Manrique et al., J.J.).

1047. The Afr. Comm’n H.P.R. similarly recognizes extraterritorial obligations wherever a State has control over territory, perpetrator or a victim or the victim’s rights. *General Comment No. 3: The Right to Life*, Afr. Comm’n H.P.R., Nov. 18, 2015, adopted 57th Ord. Sess., ¶ 14. See generally, Anne Oloo & Wouter Vandenhoele, *The Enforcement of Extraterritorial Human Rights Obligations in the African Human Rights System*, in RESEARCH HANDBOOK ON EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS 138, 138–48 (Mark Gibney & Gabrielle Simm eds., 2021).

way subject to a State's authority, responsibility, or control. In contrast, the European Court of Human Rights has consistently recognized such extraterritorial obligations only where a State Party has effective control over a territory or State agent authority, and control over persons outside its sovereign territory.¹⁰⁴⁸

(3) Where a treaty's obligations are restricted to a State's jurisdiction, such "jurisdiction" is not limited to the State Party's territory but is mediated through a relationship of power, authority, or effective control between States and individuals or groups,¹⁰⁴⁹ including future generations. Principle 24 (b) restates the general position in international human rights law that States must take all appropriate measures to refrain from conduct that would create a reasonably foreseeable risk of impairing the enjoyment of human rights by future generations, including outside their territory.¹⁰⁵⁰ This position is summarized by the Human Rights Committee in its General Comment 36 on the right to life, where the Committee interpreted the term "jurisdiction" in Article 2 of the ICCPR as follows:

[A] State party has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner.¹⁰⁵¹

From this exposition and the jurisprudence of other international human rights treaty bodies, two conditions for attributing state responsibility in terms of the ETOs owed to future generations must be met. First, there must be a sufficient link between the conduct and the extraterritorial human rights impact; and second, the human rights impact must be "reasonably foreseeable." The Principles endorse the jurisdictional threshold for state responsibility in terms of ETOs owed to future generations when State conduct has a sufficiently close link and poses a reasonably foreseeable risk of having an effect on their rights.¹⁰⁵²

(4) A causal link will be established if a State exercises effective control over the activities that cause extraterritorial harm to the human rights of future generations. The Inter-American Court of Human Rights explained:

the exercise of jurisdiction by a State of origin is based on the understanding that it is the state in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory.¹⁰⁵³

The Committee on Economic Social and Cultural Rights has confirmed that state responsibility can also be established "even if other causes have also contributed to the occurrence of the

1048. *E.g.*, *Agostinho v. Port.*, App. No. 29371/20, Eur. Ct. H.R., ¶ 170 (2024).

1049. See Elena Pribytkova, *Extraterritorial Obligations in the United Nations System: UN Treaty Bodies*, in RESEARCH HANDBOOK ON EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS 95–109 (Mark Gibney & Gabrielle Simm eds., 2021) (for an exposition of treaty body jurisprudence).

1050. *E.g.*, Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 27; Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 63; Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶¶ 107–08; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 32*, *supra* note 69, ¶ 22.

1051. Hum. Rts. Comm., *General Comment No. 36*, *supra* note 62, ¶ 63 (citations omitted).

1052. See also Lewis, *Human Rights Duties Towards Future Generations*, *supra* note 235, at 217.

1053. Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., ¶ 102.

violation.”¹⁰⁵⁴ This approach is reflected in *Sacchi v. Argentina* of the Committee on the Rights of the Child. In this case, children filed a complaint with the Committee, alleging a violation of their rights throughout their lifetimes against five States—Argentina, Brazil, France, Germany, and Turkey—arising from the States’ failures to reduce greenhouse gas emissions.¹⁰⁵⁵ The Committee held that because the States possessed the ability to regulate the activities responsible for these emissions, the States had effective control over the activities of the emissions.¹⁰⁵⁶ The Committee further held that the collective causes of climate change did not exempt any State from its individual responsibility for the potential harm to children caused by emissions within its borders, regardless of where the affected children are located.¹⁰⁵⁷

(5) The second condition to engage state responsibility for extraterritorial human rights violations of future generations is that the violation or the risk of the violation must be “reasonably foreseeable.”¹⁰⁵⁸ Reasonable foreseeability is also well-illustrated by *Sacchi v. Argentina*, where the States knowingly disregarded scientific evidence on climate change.¹⁰⁵⁹ The Committee on the Rights of the Child held that the potential harm of the State’s conduct regarding the carbon emissions originating in its territory was reasonably foreseeable, given this knowledge and evidence. In General Comment 26 of the Committee on the Rights of the Child in the section on “intergenerational equity and future generations,” the Committee clarified that “States bear the responsibility for foreseeable environment-related threats arising as a result of their acts or omissions now, the full implications of which may not manifest for years or even decades.”¹⁰⁶⁰ The Committee on the Elimination of Discrimination Against Women also indicated that the “foreseeability” of adverse human rights consequences implies that, although the State conduct occurs in the present, the extraterritorial consequences may only manifest later.¹⁰⁶¹

(6) Principle 24 (b) indicates that States must regularly conduct assessments of not only their territorial but also the extraterritorial impact of their laws, policies, and practices on the human rights of future generations.¹⁰⁶² The impact assessments of States for their extraterritorial impact are an important expression of the other Principles requiring due diligence and the internalization of prevention and precaution measures.¹⁰⁶³ The Special Rapporteur on the right to development, Surya Deva, highlighted that impact assessments and due diligence processes must explicitly consider the “impact of proposed projects on future generations and include

1054. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 32.

1055. *Sacchi v. Arg.*, *supra* note 352, ¶¶ 3.1–3.

1056. *Id.* ¶¶ 10.5–8.

1057. *Id.* ¶ 10.10.

1058. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶ 77; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 37; *Joint Statement on Human Rights and Climate Change*, ¶ 19, U.N. Doc. HRI/2019/1 (2020). See also *Guiding Principles on Extreme Poverty and Human Rights* princs. 93, 96, adopted Sept. 27, 2012, H.R.C Res/21/11, U.N. H.R.C., 21st Sess., Agenda Item 3, U.N. Doc. A/HRC/RES/21/11 (Oct. 18, 2012) [hereinafter *Guiding Principles on Extreme Poverty and Human Rights*]. See Commentary, Princ. 29 (elaborating on the evidentiary burdens to establishing victim status being one of showing a “substantial” and “reasonably foreseeable” harm of violating any of the rights of future generations under its jurisdiction or extraterritorially, triggering state responsibility).

1059. *Sacchi v. Arg.*, *supra* note 352, ¶¶ 10.9–10.

1060. Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶ 11.

1061. Comm. on Elim. Discrim. Against Women, *General Recommendation No. 24*, *supra* note 204, ¶ 32.

1062. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 44; Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶¶ 75–77, 107; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 37*, *supra* note 71, ¶¶ 43–46.

1063. See Commentary, Princs. 9, 19, 25(b), 26.

specific steps to prevent and mitigate such adverse impacts” and specifically integrate the “precautionary principle in assessing risks to the rights of future generations.”¹⁰⁶⁴

(7) Principle 24 (c) repeats the position in international human rights law that States’ extraterritorial jurisdiction is also triggered when the State exercises control over corporations, including multinational companies, and other non-State actors.¹⁰⁶⁵ Principle 24 (c) also reflects the conclusions of several international human rights treaty bodies that have indicated that States are required to take the steps necessary to prevent human rights violations abroad by non-State actors, provided that there is a reasonable link between the State and the reasonably foreseeable conduct.¹⁰⁶⁶ A reasonable link exists when non-State actors such as corporations and business enterprises are domiciled in their territory or jurisdiction, whether incorporated under their laws, or have their statutory seat, central administration, or principal place of business on the national territory.¹⁰⁶⁷ The Committee on Economic Social and Cultural Rights has indicated that States Parties should not “remain passive where an actor domiciled in its territory and/or under its jurisdiction, and thus under its control or authority, harmed the rights of others in other States, or where conduct by such an actor may lead to foreseeable harm being caused.”¹⁰⁶⁸ In the event of a reasonably foreseeable impairment of the enjoyment of the human rights of future generations, responsibility would be borne by States that did not carry out their obligations to take reasonable steps to prevent the violation. The International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) consider circumstances in which several States separately carry out internationally wrongful conduct that contributes to causing the same harm.¹⁰⁶⁹ The International Law Commission indicated that in such cases, “the responsibility of each participating State is determined individually, on the basis of its own conduct and by reference to its own international obligations.”¹⁰⁷⁰ Referring to *Corfu Channel (United Kingdom v. Albania)* from the International Court of Justice, the International Law Commission noted that a State’s responsibility is not reduced by reason of the concurrent responsibility of a third State.¹⁰⁷¹ In the *Corfu Channel* case, Albania was held responsible for damage to United Kingdom ships due to its failure to warn the United Kingdom about underwater mines apparently placed by Yugoslavia, which it knew or should have known about.

(8) The latter part of Principle 24 (c) reflects States’ obligation to protect the human rights of future generations by providing effective judicial or other State-based mechanisms to hold corporations and other non-State actors legally accountable for any violations of their rights.¹⁰⁷²

1064. Special Rapporteur on the Right to Development, *Children and Future Generations*, ¶¶ 80–81, 89, 92(c), U.N. Doc. A/HRC/57/43 (2024).

1065. *E.g.*, Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 30–31; Comm. on Rts. Child, *General Comment 26*, *supra* note 78, ¶ 108; *General Recommendation No. 30: Women in Conflict Prevention, Conflict and Post-Conflict Situations*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, ¶¶ 8, 10, U.N. Doc. CEDAW/C/GC/30 (2013); Comm. on the Elim. of Discrim. Against Women, *General Recommendation No. 37*, *supra* note 71, ¶ 49.

1066. *E.g.*, Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 32; Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶ 108.

1067. *E.g.*, Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 31–33; UNGPBHR, *supra* note 791, princ. 2, cmt. at 7, princ. 4, cmt. at 11.

1068. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 27.

1069. Int’l L. Comm’n ARSIWA, *supra* note 660, art. 47(8).

1070. *Id.*

1071. *Id.* See also *Corfu Channel (U.K. v. Alb.)*, Merits, 1949 I.C.J. 4 (Apr. 9).

1072. See also Commentary, Princ. 25.

This duty is reinforced by the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Principles on the Right to a Remedy and Reparation) that recognize “future human generations” as important beneficiaries of the right to a remedy and reparation.¹⁰⁷³ The Principles on the Right to a Remedy and Reparation thus uphold international legal principles of “accountability, justice and the rule of law” that include effective mechanisms for human rights violations of future generations attributable to non-State actors.

(9) Paragraphs (d) to (h) of Principle 24 address the extraterritorial obligations of a global character owed to future generations by addressing the various ways in which States’ conduct, including in relation to international cooperation and assistance, can impact upon both present and future generations. This is particularly crucial in an increasingly dynamic and complex interconnected world, which depends on the Earth and its life-supporting natural ecosystems. The UN System Common Principles on Future Generations in principle 3 advocates for the provision of global public goods and management of global commons for the benefit of future generations to:

accelerate support to urgently address the triple planetary crises of climate change, biodiversity loss, and pollution, which undermine the ability of future generations to fulfil their needs and interests and which threaten their survival. Global solidarity and global responsibility are key values to foster in order to ensure that the United Nations system continues to reflect and respond to a changing world.¹⁰⁷⁴

Similarly, the UNESCO Declaration on Future Generations declares that its Member States are:

Determined to contribute towards the solution of current world problems through increased international co-operation, to create such conditions as will ensure that the needs and interests of future generations are not jeopardized by the burden of the past, and to hand on a better world to future generations.¹⁰⁷⁵

(10) Principle 24 (d) restates provisions of the UN Charter and other human rights instruments that States must, individually and jointly, take deliberate, specific, and targeted measures in decisions and international agreements to create an international enabling environment conducive to protecting the rights of present and future generations.¹⁰⁷⁶ This obligation is sourced in Article 28 of the UDHR, stipulating that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”¹⁰⁷⁷ Principle 24 must be read in conjunction with other Principles to establish an internationally enabling environment aimed at addressing intra- and intergenerational human rights obligations within the framework of international solidarity, grounded in achieving a democratic and equitable international order for present and future generations.¹⁰⁷⁸ The UN General Assembly

1073. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted Dec. 15, 2005, G.A. Res. 60/147, U.N. GAOR, 16th Sess., Agenda item 71(a), annex pmb. ¶ 3, U.N. Doc. A/RES/60/147 (2006) [hereinafter Principles on the Right to a Remedy and Reparation].

1074. *U.N. System Common Principles on Future Generations* princ. 3, U.N. Doc. CEB/2023/1/Add.1 (2023).

1075. UNESCO Declaration on Future Generations, *supra* note 88, pmb. ¶ 8.

1076. *E.g.*, ICESCR, *supra* note 14, art. 2(1); CAT, *supra* note 33, art. 9(1); CRPD, *supra* note 33, art. 32; CRC, *supra* note 12, arts. 23(4), 28(3). See Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 3*, *supra* note 777, ¶ 2 (for the origins of the terminology of deliberate, concrete, and targeted steps).

1077. U.N. Charter, *supra* note 28. See also CEDAW, *supra* note 33, pmb. ¶ 9; ICESCR, *supra* note 14, pmb. ¶¶ 1–4; ICCPR, *supra* note 14, pmb. ¶¶ 1–4.

1078. See Commentary, Princs. 7, 10.

adopted resolution 3201 (S-VI), advancing the goal of an international enabling environment for present and future generations, stating:

Solemnly proclaim our united determination to work urgently for the establishment of a new international economic order based on equity, sovereign equality, interdependence, common interest and cooperation among all States, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations.¹⁰⁷⁹

The 2024 Pact for the Future commits UN Member States to close the SDG “financing gap in developing countries” by undertaking, amongst others, to “[c]reate a more enabling environment at the global, regional and national levels to increase the mobilization of domestic resources and enhance the capacities, institutions and systems of developing countries at all levels to achieve this goal, including through international support, to increase investment in sustainable development.”¹⁰⁸⁰

(11) Principle 24 (a) and paragraphs (d) to (h) restate the obligation States have in the international community to cooperate to solve common problems and improve the living conditions of humanity for both present and future generations.¹⁰⁸¹ International cooperation that disregards or contradicts the current conditions that threaten the human rights of future generations would constitute a breach of States’ global obligations. States must therefore take deliberate, specific, and targeted measures—inclusive of economic, social, environmental and climate-related actions—to establish an enabling international environment;¹⁰⁸² otherwise, the realization of the rights of present and future generations is in jeopardy. The Principles echo the position that States must take these measures individually and jointly to realize the human rights of all generations. Articles 55 and 56 of the UN Charter are clear in this regard, stating that “[a]ll members pledge themselves to take joint and separate action in cooperation with the [UN] for the achievement of the purposes set out in article 55,” which includes “universal respect for, and observance of, human rights and fundamental freedoms for all” without discrimination. The obligation to take measures “individually and jointly” affirms that State conduct to realize the human rights of present and future generations can either be carried out by one State or by several States acting jointly.

1079. Declaration on the Establishment of a New International Economic Order pmb. ¶ 3, art. 3, *adopted* May 1, 1974, G.A. Res. 3201(S-VI), U.N. GAOR, 6th Sess. (May 1974).

1080. 2024 Pact for the Future, *supra* note 16, actn. 4, ¶ 23(f).

1081. See, e.g., UDHR, *supra* note 29, pmb. ¶¶ 2, 6; U.N. Charter, *supra* note 28, pmb. ¶¶ 3, 4, art. 1(1), (3); ICESCR, *supra* note 14, arts. 2, 10(3), 11(1). For an exposition of international cooperation for present and future generations, see Skogly, *Right to Continuous Improvement of Living Conditions and Future Generations*, *supra* note 335, at 147–63; Sigrun Skogly, *Global Human Rights Obligations*, in THE ROUTLEDGE HANDBOOK ON EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS 25–39 (Mark Gibney et al. eds., 2022).

1082. See, e.g., H.R.C. Res. 48/13, *Human Right to a Clean, Healthy and Sustainable Environment*, pmb. ¶ 7, art. 4(a) (2021); G.A. Res. 76/300, *Right to a Clean, Healthy and Sustainable Environment*, pmb. ¶ 9, art. 4 (2022); U.N. Charter, *supra* note 28, pmb., arts. 1(3), 55, 56; UDHR, *supra* note 29, pmb. ¶¶ 1, 2, 6, 7, arts. 1, 22, 28; ICCPR, *supra* note 14, pmb. ¶¶ 1, 3, 4, art. 1(2); ICESCR, *supra* note 14, pmb. ¶¶ 2, 4, 5, arts. 1(2), 2(1), 10(3), 11; CEDAW, *supra* note 33, pmb. ¶¶ 1, 7, 8, 9; CRC, *supra* note 12, pmb. ¶¶ 1, 2, 4, 7, 11, arts. 4, 17, 23(4), 24(4), 28(3), 45; CERD, *supra* note 33, pmb. ¶¶ 1, 9; CRPD, *supra* note 33, pmb. ¶¶ (a), (c), (l), arts. 4(2), 32; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 3*, *supra* note 777, ¶ 2; Declaration on the Right to Development, *supra* note 251, pmb. ¶¶ 1, 3, 5, 15, arts. 3, 4; Draft Convention on the Right to Development, *supra* note 251, arts. 3(i), 13(2).

(12) The Principles emphasize that although global extraterritorial obligations apply to all States, their application cannot be uniform across all States. States “in a position to assist,” as per Principle 24 (f), have an obligation to provide international assistance commensurate with their capacities, resources, and influence and to cooperate with each other to ensure respect for and the protection and fulfillment of the human rights of future generations. The Committee on Economic Social and Cultural Rights has clarified that the obligation to prioritize core obligations, which aim to secure the minimum essential levels of rights, extends to the context of international cooperation obligations. The Committee emphasized that these core obligations create responsibilities for all States and international responsibilities for developed States, as well as for others who are “in a position” to provide assistance.¹⁰⁸³ Importantly, the obligations imposed by the core obligations of ESCRs “establish an international minimum threshold that all developmental policies should be designed to respect.”¹⁰⁸⁴ The Committee noted that if a national or international policy or strategy does not meet this international minimum threshold, it is inconsistent with States’ legally binding obligations.¹⁰⁸⁵

(13) In line with Principle 24 (d), measures must be taken in accordance with equity and CBDR-RC recognized in international environmental law and reflected in some standards articulated in international human rights law.¹⁰⁸⁶ For instance, in terms of international environmental law, Article 3 (1) of the UNFCCC asserts that States “should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities.”¹⁰⁸⁷ Dinah Shelton argues that CBDR-RC establishes a foundation for “corrective justice,” requiring developed States to compensate for their contribution or complicity in past, present, and future harms.¹⁰⁸⁸ CBDR-RC also requires wealthier States to bear greater responsibility for addressing global environmental challenges, particularly because of their significant role in causing these problems.¹⁰⁸⁹

(14) Principle 24 (e) addresses the obligations incumbent upon States to observe their international human rights duties toward future generations concerning other international agreements, policy-making endeavors, and engagement in international relations. This requires States to ensure that, for instance, international trade and investment agreements are applied and interpreted in a manner consistent with the human rights of future generations. For example, the Committee on Economic Social and Cultural Rights has urged States to pay attention to ESCRs

1083. *Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 25th Sess., ¶ 16, U.N. Doc. E/C.12/2001/10 (2001).

1084. *Id.* ¶ 17.

1085. *Id.*

1086. *E.g.*, Paris Agreement, *supra* note 99, art. 2(2); Kyoto Protocol, *supra* note 694, art. 10; *Sacchi v. Arg.*, *supra* note 352, ¶ 10.10; Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶¶ 91, 98(b), 112; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 37*, *supra* note 71, ¶ 19; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 58 (without labeling it CBDR-RC but implicitly recognized it). See also MARGOT E. SALOMON, GLOBAL RESPONSIBILITY FOR HUMAN RIGHTS: WORLD POVERTY AND THE DEVELOPMENT OF INTERNATIONAL LAW 187–88 (2007).

1087. UNFCCC, *supra* note 98.

1088. Dinah Shelton, *Describing the Elephant: International Justice and Environmental Law*, in ENVIRONMENTAL LAW AND JUSTICE IN CONTEXT 55, 61–67 (Jonas Ebbesson & Phoebe Okowa eds., 2009).

1089. Shelton, *Describing the Elephant*, *supra* note 1088, at 62. See also Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶ 104; Comm. on the Elim. of Discrim. Against Women, *General Recommendation No. 37*, *supra* note 71, ¶ 1; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 58.

when entering into international trade, investment, intellectual property, and tax agreements, and to identify potential conflicts with ESCRs.¹⁰⁹⁰ Consistency between trade and investment agreements and human rights obligations requires that the former be designed, implemented, applied, and interpreted in a manner that does not undermine or restrict a State's capacity to fulfill its human rights obligations toward future generations, as provided for in Principle 24 (e). To illustrate, with respect to the right to water, the Committee on Economic Social and Cultural Rights established:

States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of further legal instruments. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to water. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water.¹⁰⁹¹

The ETOs related to the rights to water logically extend to the core obligations imposed by the right to water, which must be realized for both present and future generations.¹⁰⁹² This includes the adoption of "comprehensive and integrated strategies and programmes" to ensure that other international agreements "do not interfere with access to adequate water" for both present and future generations.¹⁰⁹³

(15) Principle 24 (e) further specifies that where international agreements cannot be applied and interpreted in a manner that harmoniously conforms to the human rights of future generations, States should refrain from entering into such agreements. If they have already entered into agreements, Principle 24 (e) further stipulates that States should terminate, amend, or withdraw from them if new evidence indicates that these agreements would adversely impact the human rights of future generations. The UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements and the accompanying commentary establish innovative guidelines to assist States in deciding whether to enter, terminate, amend, or withdraw from agreements.¹⁰⁹⁴ In particular, these guidelines require that international agreements include clauses providing flexibilities, exceptions, and sufficient rules to ensure that human rights are not overridden.¹⁰⁹⁵ In accordance with Principle 24 (e) of the Maastricht Principles on Future Generations, where States identify that international agreements pose a substantial and foreseeable risk of violating human rights, they have a duty to notify, consult, and negotiate with other States to ensure that the agreements are either amended or, where appropriate, terminated.¹⁰⁹⁶ The duty to notify, consult, and negotiate must be carried out through proper impact assessments that are publicly available, transparent, and include appropriate and

1090. *E.g.*, Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 12*, *supra* note 39, ¶¶ 19, 36; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 3*, *supra* note 777, ¶ 2; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 35; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 22*, *supra* note 204, ¶ 31; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 12–13; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 34*, *supra* note 511, ¶ 11.

1091. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 15.

1092. *Id.* ¶ 11.

1093. *Id.* ¶ 28. For a sustained exposition of extraterritorial obligations of the right to water as part of the global commons that must be preserved for future generations, see TAKELE S. BULTO, *THE EXTRATERRITORIAL APPLICATION OF THE HUMAN RIGHT TO WATER IN AFRICA* 127–224 (2014).

1094. Guiding Principles on HRIAs of Trade & Investment Agreements, *supra* note 1015.

1095. *Id.* princ. 3, cmt. at 7–8.

1096. *Id.* princ. 5(c), cmt. at 11–12.

inclusive participatory processes involving experts and representatives of affected communities.¹⁰⁹⁷ Such standards should be applied to both present and future generations.

(16) Principle 24 (g) provides that States in a position to do so bear ETOs for sovereign financing and debt, which have reasonably foreseeable effects on the human rights of future generations. In particular, States should individually and collectively take steps to prevent and resolve unsustainable State debt. SDG 17 of the 2030 Agenda for Sustainable Development reiterates the importance of strengthening the means of implementation and revitalizing the global partnership for sustainable development.¹⁰⁹⁸ SDG 17.4 specifically provides that developing countries should be assisted in attaining long-term debt sustainability by implementing coordinated policies that promote debt financing, debt relief, and debt restructuring as necessary and address the external debt of highly indebted impoverished countries to alleviate debt distress.¹⁰⁹⁹ The Committee on the Rights of the Child has noted in its General Comment 19 on public budgeting that sustainable debt management is part of international cooperation obligations, requiring States, as creditors and lenders or on behalf of creditors and lenders, to ensure that transparent policies and systems with clear roles and responsibilities for borrowing and lending, as well as managing and monitoring debt, are in place.¹¹⁰⁰ The management and monitoring of debt are crucial for future generations, as the Independent Expert on the effects of foreign debt and other related international financial obligations of States, Fantu Cheru, pointed out instances where countries accumulated unsustainable debt that was ultimately “left to be paid by future generations.”¹¹⁰¹ The failure to prevent or resolve unsustainable State debt has profound implications for the human rights of present and future generations, particularly because it poses a long-term structural barrier to the appropriate mobilization and allocations of State resources for the realization of rights.¹¹⁰²

(17) The individual and collective steps required of States in a position to do so must aim to ensure that the terms of their transactions and conditionalities for financial support do not undermine the borrower State’s ability to respect, protect, and fulfill its human rights obligations toward present and future generations.¹¹⁰³ This includes performing due diligence on the borrower’s creditworthiness and ensuring that the loan serves a public purpose to realize human rights without increasing the borrower’s external debt to an unsustainable level.¹¹⁰⁴ In this regard, the Independent Expert on foreign debt and human rights, Juan Bohoslavsky, has recommended

1097. *Id.* princ. 4, cmt. at 9–11, princ. 5(c), cmt. at 11–12.

1098. 2030 Agenda for Sustainable Development, *supra* note 335.

1099. *Id.* SDG 17.4. See also 2024 Pact for the Future, *supra* note 16, actn. 15, ¶ 78.

1100. Comm. on Rts. Child, *General Comment No. 19*, *supra* note 77, ¶¶ 78–79.

1101. *Report by the Independent Expert, Effects of Structural Adjustment Policies on the Full Enjoyment of Human Rights, Fantu Cheru*, U.N. ESCOR, Comm’n Hum. Rts, 55th Sess., Agenda Item 10, ¶ 22 U.N. Doc. E/CN.4/1990/50 (Feb. 24, 1999).

1102. See, e.g., Comm. on Rts. Child, *General Comment No. 19*, *supra* note 77, ¶¶ 74–79; *General Comment No. 2: International Technical Assistance Measures*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 4th Sess., ¶ 9, U.N. Doc. E/1991/23 (1990); *Statement on Public Debt, Austerity Measures and the ICESCR*, ¶¶ 1–2, U.N. Doc. E/C.12/2016/1 (2016).

1103. *Basic Principles on Sovereign Debt Restructuring Processes*, adopted Sept. 10, 2015, G.A. Res. 69/319, UN. GAOR, 69th Sess., Agenda Item 13(a), princs. 15–16, U.N. Doc. A/RES/69/319 (Sept. 29, 2015); Special Rapporteur on Extreme Poverty and Human Rights, *Climate Change and Poverty*, ¶¶ 43–45, 52–53, U.N. Doc. A/HRC/41/39 (2019); U.N. Conf. on Trade & Dev., *Consolidated Principles on Promoting Responsible Sovereign Lending and Borrowing* § II, ¶ 8, U.N. Doc. UNCTAD/GDS/DDF/2012/Misc.1 (Jan. 10, 2012).

1104. Guiding Principles on HRIAs of Economic Reforms, *supra* note 779, princs. 17–22.

that lenders and creditors should not only assess the impact the loan will have on the enjoyment of human rights but also whether the loan will be “serviced in the future,” considering whether the “debt obligations imposed on future generations of the country are just.”¹¹⁰⁵ Principle 24 (g) further specifies that debt restructuring, unconditional debt relief, or cancellation may be appropriate measures to ensure that sufficient resources are available for the realization of human rights. The Independent Expert on foreign debt and human rights, Yuefen Li, has emphasized that when countries are burdened with structural, unsustainable debt and consequently face debt distress—in other words, when they are unable to meet their financial obligations and are insolvent—it becomes necessary to restructure or, where appropriate, cancel their debt.¹¹⁰⁶ All States, whether as lenders of bilateral loans or as members of international organizations providing financial assistance, must ensure that they do not impose obligations on borrowing States that would force them to adopt retrogressive measures in violation of their human rights obligations or impose conditions, for example, with a “sustained impact” on the right to social security, thereby threatening the rights of future generations.¹¹⁰⁷ To illustrate, the African Commission has noted that State Parties must implement effective regulatory mechanisms to prevent over-indebtedness. The African Commission indicated that regulation is necessary because over-indebtedness could limit the State’s capacity to fulfill its obligation to provide accessible social services on a non-discriminatory basis and to address “entrenched structural barriers” that “generate and perpetuate inequality over generations.”¹¹⁰⁸

(18) Part of international cooperation duties, in accordance with CBDR-RC as established in Principle 24 (d), includes international assistance stipulated in Principle 24 (h). Principle 24 (h) reaffirms established international human rights standards and applies them to future generations, emphasizing that those in a position to assist must contribute to the realization of human rights, including providing financial and technological assistance, developmental aid, institutional capacity-building, and knowledge-sharing.¹¹⁰⁹

1105. *Report of the Independent Expert on Foreign Debt and Human Rights, Financial Complicity: Lending to States Engaged in Gross Human Rights Violations*, Juan Pablo Bohoslavsky, U.N. H.R.C., 28th Sess., Agenda Item 3, ¶ 30, U.N. Doc. A/HRC/28/59 (2014).

1106. *Report of the Independent Expert on Foreign Debt and Human Rights, Debt-Related Problems of Developing Countries Caused by the Coronavirus Disease (COVID-19) Pandemic*, Yuefen Li, U.N. GAOR, 75th Sess., Agenda Item 72(b), ¶ 69, U.N. Doc. A/75/164 (2020).

1107. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 19*, *supra* note 65, ¶ 42; *Statement on Public Debt, Austerity Measures and the ICESCR*, ¶¶ 4–5, U.N. Doc. E/C.12/2016/1 (2016); Guiding Principles on HRIAs of Economic Reforms, *supra* note 779, princ. 10.

1108. *General Comment No. 7: State obligations under the African Charter on Human and Peoples’ Rights in the Context of Private Provision of Social Services*, Afr. Comm’n H.P.R., 72d Or. Sess., ¶¶ 17–18, 38(d)(i), 47(a)(iv) (2022).

1109. On financial and technical assistance, see, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶¶ 18, 34; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 46; *Report of the Independent Expert on Foreign Debt and Human Rights, Debt-Related Problems of Developing Countries*, Yuefen Li, ¶ 14, 53, U.N. Doc. A/75/164 (2020). Regarding developmental aid, see Declaration on the Right to Development, *supra* note 251, pmb. ¶¶ 1, 8, 14, arts. 3, 4, 6, 7, 10. On institutional capacity-building, see generally *Report of the UNHCHR, Improving Technical Cooperation and Capacity-Building in the Field of Human Rights*, U.N. H.R.C., 53d Sess., Agenda Items 2 & 10, U.N. Doc. A/HRC/53/63 (2023). On knowledge-sharing, see, e.g., *Report of the 2023 Social Forum*, U.N. H.R.C., 55th Sess., Agenda Item 5, ¶¶ 53–58, U.N. Doc. A/HRC/55/68 (2024); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 46.

(19) Principle 24 (i) clarifies that international assistance should not undermine national development strategies, policies, domestic accountability mechanisms, and procedures. In this respect, the UN Guiding Principles on Extreme Poverty and Human Rights stipulate:

International assistance should respect partner countries' ownership of their poverty reduction strategies, and should be aligned with partner countries' national development strategies, institutions and procedures. Donors' actions should be harmonized, transparent and coordinated, and both donors and partners should be accountable for their actions and the results of their interventions.¹¹¹⁰

Principle 24 (i) further clarifies that the deployment of international assistance must adhere to the standards imposed by human rights, including the right to self-determination, the right to participate in decision-making, and the protection of the human rights of future generations. By way of example, international development assistance will breach international law if the projects lead to forced evictions, pollute water sources, or are carried out in a manner that infringes upon the right of Indigenous Peoples to participate in decision-making processes affecting their rights to land and water, which they hold in trust for present and future generations.¹¹¹¹ An accountability mechanism that can be strengthened is the reporting mechanisms under various international and regional treaty monitoring obligations. One such mechanism is the Committee on Economic Social and Cultural Rights' Reporting Guidelines, which require that States:

Indicate the impact of international economic and technical assistance and cooperation, whether received or provided by the State party, on the full realization of each of the Covenant rights in the State party or, as the case may be, in other countries, especially developing countries.¹¹¹²

(20) Paragraphs (i) and (j) of Principle 24 establish that any form of international assistance, such as developmental aid provided for the realization of the human rights of future generations, must adhere to human rights standards for both donor and recipient States. In situations where States lack adequate capacity and resources for realizing the human rights of future generations, States have an obligation to seek appropriate international assistance, to receive appropriate assistance commensurate with their human rights obligations, and to make *effective* use of such assistance when provided.¹¹¹³ At the same time, the States providing assistance also have crucial ETOs, which must be guided both procedurally and substantively by human rights standards throughout the processes of seeking, receiving, and effectively utilizing assistance. In this context, Lillian

1110. Guiding Principles on Extreme Poverty and Human Rights, *supra* note 1058, princ. 93.

1111. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 7*, *supra* note 187, ¶¶ 17–18; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶¶ 23, 31; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 41. On international investment, the right to development, and the relevance of a human rights-based approach, see, e.g., *Study by the Expert Mechanism on the Right to Development, Right to Development in International Investment Law*, U.N. H.R.C., 54th Sess., Agenda Item 3, U.N. Doc. A/HRC/54/82 (2023). Regarding inequalities and international assistance, see *Study by the Expert Mechanism on the Right to Development, Inequality, Social Protection and the Right to Development*, U.N. H.R.C., 54th Sess., Agenda Item 3, U.N. Doc. A/HRC/54/83 (2023).

1112. *Guidelines on Treaty-Specific Documents to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 41st Sess., annex ¶ 9, U.N. Doc. E/C.12/2008/2 (2009) [hereinafter Comm. on Econ., Soc. & Cult. Rts. Reporting Guidelines].

1113. E.g., *Maastricht Principles on ETOs*, *supra* note 1, princ. 34, at 1157–58; *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, U.N. GAOR, Comm. on Rts. Child, 33d Sess., ¶ 43, U.N. Doc. CRC/GC/2003/4 (2003); Comm. on Rts. Child, *General Comment No. 5*, *supra* note 918, ¶¶ 60–61; *Statement: An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., ¶ 5, U.N. Doc. E/C.12/2007/1 (2007).

Chenwi and Maxi Ussar advocate for a human rights-based approach to development assistance, arguing that assistance should “support a conceptual shift from development based on externally devised, charity-focused aid provided to passive recipients to looking at development as a process that empowers people through an inclusive and participatory approach.”¹¹¹⁴ Such an inclusive and participatory approach to development assistance is essential for ensuring the realization of human rights for present and future generations, especially by addressing the inadequate or absent involvement of marginalized groups in the planning, design, implementation, monitoring, and evaluation of assistance projects.¹¹¹⁵ In line with Principle 24 (i), an inclusive and participatory approach to development assistance requires the creation of mechanisms that enable representatives of future generations to participate in decision-making about international assistance. These mechanisms must further enable representatives to seek a remedy and redress on behalf of future generations when international assistance has violated or threatens to violate their human rights.

III. OBLIGATIONS AND RESPONSIBILITIES OF OTHER ACTORS

25. *Duties and Responsibilities of Non-State Actors Including Business Enterprises*

- a) *Non-State actors, including business enterprises, must at the very minimum, respect the human rights of future generations, and thus refrain from causing or contributing to adverse impacts on their human rights through their activities, products or services, and prevent harm, mitigate risk and remedy such impacts when they occur.*
- b) *Businesses and other non-state actors whose actions may negatively affect the enjoyment of human rights by future generations must adopt a clear policy commitment to respect future generations’ human rights. They must comply with their duty of care including along their value chains. They must undertake human rights due diligence processes to identify and assess any actual or potential impacts on human rights posed by their activities, products and services in all their business relationships. They must also disclose, prevent harm, mitigate risks and remedy the adverse effects of their actions on the human rights of future generations.*
- c) *Non-state actors that breach these duties and responsibilities should be held accountable under international law.*

Commentary

(1) Principle 25 reflects the approach set out in international human rights law that all States must take necessary measures to ensure that non-State actors, such as private individuals and organizations, and transnational corporations and other business enterprises do not nullify or impair the enjoyment of human rights.¹¹¹⁶ International standards, in particular the UNGPBHR, also recognize the responsibility of businesses to respect all human rights and freedoms as “a

1114. Lillian Chenwi, *Human Rights-Based Approaches to Development Assistance and Policies*, in THE ROUTLEDGE HANDBOOK ON EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS 213, 219 (Mark Gibney et al. eds., 2023) (quoting Maxi Ussar).

1115. Chenwi, *Development Assistance and Policies*, *supra* note 1114, at 219–20.

1116. See *Maastricht Principles on ETOs*, *supra* note 1, princ. 24, at 1134–36 (provides the legal bases for this duty, drawing on sources relating to all human rights and general international law).

global standard of expected conduct.”¹¹¹⁷ However, businesses and other non-State actors cannot treat their duty to respect human rights only as responsibilities grounded in “a global standard of expected conduct,” but must treat this duty as being legally obligatory upon them, given that States are required to ensure such conduct by non-States actors.¹¹¹⁸ Principle 25 refers only to the duty to respect rights regarding non-State actors so as to address their more common roles and establish a baseline of human rights duties and responsibilities owed toward future generations.

(2) The Special Rapporteur on the human right to a healthy environment, David Boyd, in the report on business, planetary boundaries, and the right to a clean, healthy and sustainable environment has stated that the planetary crisis is the biggest threat “human rights ever faced, because it threatens the rights of everyone alive as well as the rights of future generations.”¹¹¹⁹ In particular, the Special Rapporteur stressed:

The current economic and business paradigms are based on exploiting people and nature. Among the fundamental flaws of these paradigms are a belief in limitless growth, short-term thinking, a narrow focus on maximizing profits for shareholders, and the externalization of social, health and environmental costs onto society.¹¹²⁰

The Special Rapporteur noted that every business, regardless of its size or industry, has the responsibility to “respect” all internationally recognized human rights, “including the right to a clean, healthy and sustainable environment, throughout their value chains.”¹¹²¹ Principle 25 recognizes such responsibilities also toward the human rights of future generations. This does not exclude instances where non-State actors have duties other than respect toward present and future generations.

(3) Principle 25 refers only to the duty to respect rights regarding non-State actors so as to address the duties that all non-State actors have toward future generations. However, certain non-State actors have duties to protect or fulfill human rights in particular circumstances—for example, when governments have contracted or authorized them to deliver public and social services, which can have intergenerational human rights implications.¹¹²² In these instances, States must ensure through regulation that the non-State actor taking on such functions protects and fulfills

1117. UNGPBHR, *supra* note 791, princ. 11, at 13.

1118. *Id.* Since the *Maastricht Principles on ETOs*, *supra* note 1, see, e.g., Comm. on Rts. Child, *General Comment No. 15*, *supra* note 64, ¶¶ 8, 14; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 5, 12, 17, 33–34; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 43, 58–62, 75; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 35*, *supra* note 206, ¶ 24(a); *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 107–14 (2023).

1119. *Report of the Special Rapporteur on the Human Right to a Healthy Environment, Business, Planetary Boundaries*, David Boyd, U.N. GAOR, 55th Sess., Agenda Item 3, ¶ 5, U.N. Doc. A/HRC/55/43 (2024).

1120. *Id.* ¶ 2.

1121. *Id.* ¶ 6.

1122. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 4*, *supra* note 682, ¶ 14; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 13*, *supra* note 586, ¶ 59; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 14*, *supra* note 284, ¶ 35; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 18*, *supra* note 653, ¶ 52 (on the duty of ensuring non-discriminatory access to work); *General Recommendation No. 36: Rights of Girls and Women to Education*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, ¶ 39(d), U.N. Doc. CEDAW/C/GC/36 (2017); Comm. on Rts. Child, *General Comment No. 15*, *supra* note 209, ¶¶ 78–82; *General Comment No. 4: Right to Inclusive Education*, U.N. GAOR, Comm. on Rts. People with Disabilities, ¶¶ 38, 74, U.N. Doc. CRPD/C/GC/4 (2016) (private education institutions also have an obligation to fulfill the requirements of inclusive education for people with disabilities. For an exposition that the “duty to respect” is not always the appropriate duty relating to ESCRs for private actors, especially when State functions are delegated, see Nolan, *Privatization and Economic and Social Rights*, *supra* note 652, at 840).

the human rights of present and future generations.¹¹²³ For example, in General Comment 7 on State obligations under the African Charter in the context of private provision of social services, the African Commission emphasized that when States involve private actors in the provisioning of social services, these services should not operate on a commercial basis.¹¹²⁴ The African Commission also highlighted that States must ensure non-State actors adhere to their due diligence obligations to prevent services from becoming unaffordable, or resulting in retrogressive measures, such as water disconnections, cuts to social security payments, and insufficient maintenance of infrastructure necessary for social service provision, otherwise States and non-State actors would contribute to the perpetuation of “inequality over generations.”¹¹²⁵ In this respect, the Maastricht Principles on ETOs underline that state responsibility extends to the conduct of “non-State actors acting on the instructions or under the direction or control of the State,” as well as to non-State actors “empowered by the State to exercise elements of governmental authority.”¹¹²⁶

(4) Principle 25 (a) of the Maastricht Principles on Future Generations refers to established international human rights law standards requiring non-State actors in exercising their duty to respect human rights to refrain from causing or contributing to adverse impacts on human rights through their activities, products or services and prevent harm, mitigate risk, and remedy such impacts when they occur.¹¹²⁷ The UNGPBHR establishes an independent responsibility for businesses, requiring them to adopt a policy commitment to meet their responsibility to respect human rights, to act with due diligence to avoid infringing the rights of others, and address adverse impacts with which they are involved.¹¹²⁸ An example of the need for an independent responsibility to respect the human rights of future generations relates to pervasive practices of transnational companies dumping toxic wastes, including nuclear industrial waste and other harmful substances, in mostly States with weak governance capacity to protect present and future generations from business-related human right abuses. In *LIDHO v. Côte d’Ivoire*, the African Court considered corporate accountability of the multinational company, TRAFIGURA Ltd.,

1123. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 7*, *supra* note 187, ¶ 27; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 9, 18–19, 21–22; Comm. on Rts. Child, *General Comment No. 16*, *supra* note 75, ¶ 28; Comm. on Rts. People with Disabilities, *General Comment No. 4*, *supra* note 1122, ¶ 74.

1124. Afr. Comm’n H.P.R., *General Comment No. 7*, *supra* note 1108, ¶¶ 11–14.

1125. *Id.* ¶¶ 18, 28, 56, 62. See also Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶¶ 24, 27.

1126. *Maastricht Principles on ETOs*, *supra* note 1, princ. 12, at 1110–12. See also Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶¶ 51–52; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 11, 32–33.

1127. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 22*, *supra* note 204, ¶¶ 14, 17, 42–43, 60; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 14; Comm. on Econ., Soc. & Cult. Rts. Reporting Guidelines, *supra* note 1112, ¶¶ 15(b), 30, 48(c), 56(b); Comm. on the Elim. of Racial Discrim., *General Recommendation No. 29*, *supra* note 284, ¶ 7; *General Recommendation No. 19: Prevention of Racial Discrimination*, U.N. GAOR, Comm. on Elim. Racial Discrim., 42d Sess., ¶ 3, U.N. Doc. A/48/18 (1995); Comm. on Rts. People with Disabilities, *General Comment No. 2*, *supra* note 1033, ¶¶ 13, 18; *General Comment No. 5: Living Independently and Being Included in the Community*, U.N. GAOR, Comm. on Rts. People with Disabilities, 18th Sess., ¶ 53, U.N. Doc. CRPD/C/GC/5 (2017); *Joint General Comment: Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return*, Comm. on Migrant Workers (*General Comment No. 4*) & Comm. on Rts. Child (*General Comment No. 23*), ¶ 52, U.N. Doc. CMW/C/GC/4-CRC/C/GC/23 (2017); Comm. on Elim. Discrim. Against Women, *General Recommendation No. 24*, *supra* note 204, ¶ 17.

1128. UNGPBHR, *supra* note 791, princs. 12–13, 15, 16–17, cmt. at 13–17. See also *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 114 (Nov. 27, 2023).

dumping toxic wastes in Côte d'Ivoire, which resulted in air pollution and groundwater contamination spreading across the district of Abidjan with an intergenerational health impact.¹¹²⁹ The African Court held that the respondent State failed to exercise its duties to prevent the human rights violations.¹¹³⁰ The Court indicated that even though human rights duties, particularly the duty to respect, are primarily incumbent on States, "it is also true that this responsibility is incumbent on companies, notably, multinational companies."¹¹³¹ The Court relied on the independent responsibility placed on corporations established in the UNGPBHR, which the African Court stated "require enterprises to commit themselves to public policies in prevention and reparation, due diligence in continuous identification of the consequences of their activities."¹¹³² The Court attributed direct responsibility for the human rights violations resulting from the dumping of the toxic waste in Abidjan to the State, but nevertheless established an indirect responsibility on businesses. A dissenting opinion of Justice Blaise Tchikaya held that direct responsibility on the multinational company was appropriate and "[t]he Court should horizontally extend the positive obligations contained in the African Charter to the powerful multinational companies that mastermind massive human rights violations on the continent."¹¹³³

(5) Solomon Dersso and Elsabé Boshoff argue that the African Court missed the opportunity to hold the corporate actor directly responsible as the corporate conduct was a "positive action" with clearly foreseeable human rights violations.¹¹³⁴ They indicate that it would have been more appropriate for the African Court to have relied on the legal standards set by the African Commission in its State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter, which link corporate responsibilities with the individual duties under Article 27 of the African Charter.¹¹³⁵ This approach should have established direct corporate accountability in the African human rights system based on individual duties. The Maastricht Principles on Future Generations recognize that individual duties are also embodied in international human rights instruments and standards, which are a crucial means to hold private entities accountable for violations of their individual duties to uphold the human rights of future generations.¹¹³⁶ This is particularly necessary to address the intergenerational human rights violations stemming from extractive business industries such as oil extraction, burning fossil fuels, and industrial smelters, which are well-established in human rights law.¹¹³⁷

1129. LIDHO v. Côte d'Ivoire, App. No. 041/2016, Afr. Ct. H.P.R., ¶¶ 1, 3–5 (2023).

1130. *Id.* ¶ 139.

1131. *Id.* ¶ 142.

1132. *Id.*

1133. LIDHO v. Côte d'Ivoire, App. No. 041/2016, Afr. Ct. H.P.R., ¶ 52 (dissenting opinion by Tchikaya, J.).

1134. Solomon Dersso & Elsabé Boshoff, *Extending Human Rights Accountability for Corporate Actors in LIDHO v Côte d'Ivoire case of the African Court*, EJIL:Talk! (Feb. 21, 2023), <https://www.ejiltalk.org/extending-human-rights-accountability-for-corporate-actors-in-the-lidho-v-cote-divoire-case-of-the-african-court/>.

1135. *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment*, Afr. Comm'n H.P.R., ¶¶ 56–64 (May 22, 2017).

1136. See Commentary, Princ. 27.

1137. See, e.g., *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Corporations and Human Rights: A Survey of the Scope and Patterns of Alleged Corporate-Related Human Rights Abuse*, U.N. H.R.C., 8th Sess., Agenda Item 3, ¶¶ 8, 22, 26, 46–49, 59, 67–68, 74–77, U.N. Doc. A/HRC/8/5/Add.2 (May 23, 2008); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 32; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 14*, *supra* note 284, ¶ 52; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 39*, *supra* note 39, ¶¶ 7, 58.

(6) Principle 25 (b) utilizes the concept of due diligence as developed in human rights law standards and the UNGPBHR.¹¹³⁸ Human rights due diligence requires a continuous process in which businesses are required to identify, prevent, mitigate, and publicly report on their actual and potential adverse impacts on human rights of present and future generations.¹¹³⁹ Human rights due diligence applies to all businesses, but its scope and extent for the human rights of future generations will vary depending on factors such as the size, sector, operational context, and structure of a business, as well as the severity of the potential adverse human rights impacts.¹¹⁴⁰ The operationalization of businesses' human rights due diligence should also ensure sufficient access to information, broad participation, including consultation with rightsholders and representatives of future generations, as well as obtaining expert input to identify their activities' intergenerational impacts, as key components at all stages of due diligence processes.¹¹⁴¹ These features of due diligence in the context of intergenerational human rights impacts of business activities are illustrated in *Habitantes de La Oroya v. Peru* of the Inter-American Court of Human Rights.¹¹⁴² The Court reiterated the independent responsibility imposed on businesses as per the UNGPBHR and noted:

companies are the first to be responsible for their conduct in the activities they carry out, since their active participation is essential for the respect and observance of human rights. Companies must adopt, on their own, preventive measures for the protection of the human rights of their workers, as well as those aimed at preventing their activities from having negative impacts on the communities in which they operate or on the environment. In this regard, the Court has considered that the regulation of business activities . . . must be directed at ensuring that they carry out continuous assessments regarding the risks to human rights, and respond through effective and proportional measures to mitigate the risks caused by their activities, taking into account their resources and capacities, as well as with accountability mechanisms regarding any damage that has been caused. This is an obligation that must be adopted by companies and regulated by the State.¹¹⁴³

The Court held that, as part of their human rights obligations to protect, States must regulate and oversee a "stricter due diligence process"¹¹⁴⁴ for companies when their operations present a significant risk to human rights, especially when these risks have an intergenerational impact on disadvantaged groups and children.¹¹⁴⁵ The Court held the mining company indirectly

1138. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 16, 33; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 75, 84; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 30, 43; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 28*, *supra* note 284, ¶ 13; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 35*, *supra* note 206, ¶ 24(2); Comm. on Rts. Child, *General Comment No. 15*, *supra* note 209, ¶ 80.

1139. UNGPBHR, *supra* note 791, § II (generally), princ. 17 (specifically), cmt. at 13–22; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 16, 33; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶¶ 75, 84; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶¶ 30, 43; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 35*, *supra* note 206, ¶ 24(2); Comm. on Elim. Discrim. Against Women, *General Recommendation No. 30*, *supra* note 39, ¶ 15; Comm. on Rts. Child, *General Recommendation No. 15*, *supra* note 209, ¶¶ 76, 80.

1140. UNGPBHR, *supra* note 791, princ. 17(b), cmt. at 16–17.

1141. *Id.* princ. 18, cmt. at 17–18; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 37*, *supra* note 71, ¶ 51; Comm. on Rts. Child, *General Recommendation No. 15*, *supra* note 209, ¶ 26.

1142. *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511 (2023).

1143. *Id.* ¶ 114.

1144. *Id.* ¶ 142.

1145. *Id.* ¶¶ 140–43.

responsible,¹¹⁴⁶ but ultimately found the State responsible for its failure to effectively regulate the due diligence processes of mining and metallurgical activities of an industrial smelter, which exposed the La Oroya community to severe toxic emissions that polluted the air, water, and soil across the geographic area of the La Oroya.¹¹⁴⁷ This resulted in nearly the entire population of children and other disadvantaged groups having dangerously elevated levels of lead and other heavy metals in their blood, constituting a “sacrifice zone” and a “systematic violation of the human rights of the residents,” endangering the health, integrity, and life of the community.¹¹⁴⁸ The Court pointed out that States must comply with their obligations to protect the environment, taking into account the environmental damage that the companies’ activities had on “present and future generations.”¹¹⁴⁹ In this respect, the Court specifically held that the principle of intergenerational equity is of special relevance to children, “as they are the ones who may be most affected by the present and future consequences of environmental damage,” thereby imposing heightened obligations of protection for children, “particularly in terms of preventing harm to their health caused by environmental pollution.”¹¹⁵⁰

(7) The Principles establish that the responsibility to respect human rights requires that businesses exercise a duty of care, with due diligence serving as the operational mechanism to fulfill this duty.¹¹⁵¹ A duty of care applies to all a business’s activities and relationships, regardless of their position within its value or supply chains.¹¹⁵² Principle 25 (b) imposes a duty of care along the supply chain of businesses, which is necessary in relevant cases for establishing the liability of a parent company when the rights of present and future generations are affected by its subsidiaries.¹¹⁵³ For example, the United Kingdom Supreme Court decision in *Vedanta Resources PLC v. Lungowe* held that a parent company owed a “duty of care” to persons affected by its subsidiaries.¹¹⁵⁴ In this case, Zambian farmers alleged harm to their health and livelihoods due to water pollution caused by a copper plant owned and operated by Konkola Copper Mines (KCM), and Vedanta Resources PLC (Vedanta), the United Kingdom parent company of KCM.¹¹⁵⁵ The claim was brought against KCM due to its operation of the copper plant, and against Vedanta due to its control of the subsidiary’s compliance with health, safety, and environmental regulations. The Court held that Vedanta had assumed responsibility for a duty of care for the

1146. *Id.* ¶ 352 (in terms of the remedies of compensation and guarantees of non-repetition, the Court held that the mining owners must face the consequences and compensate for the environmental damage caused by their operations, consistent with the “polluter-pays” principle).

1147. *Id.* ¶¶ 111, 134, 153–80, 188–96, 220–30, 235–37, 263–64, 354, 393.

1148. *Id.* ¶¶ 180, 263.

1149. *Id.* ¶¶ 141, 242–43.

1150. *Id.* ¶ 243.

1151. Gabrielle Holly & Claire M. O’Brien, *Human Rights Due Diligence Laws: Key Considerations*, Danish Inst. for Hum. Rts, at 16–17 (2021); Mark B. Taylor, *Human Rights Due Diligence in Theory and Practice*, in RESEARCH HANDBOOK ON HUMAN RIGHTS AND BUSINESS 88, 106 (Surya Deva & David Birchall eds., 2020).

1152. See Doug Cassel, *Vedanta v. Lungowe Symposium: Beyond Vedanta – Reconciling Tort Law with International Human Rights Norms*, *Opinio Juris* (Apr. 19 2019), <http://opiniojuris.org/2019/04/19/vedanta-v-lungowe-symposium-beyond-vedanta-reconciling-tort-law-with-international-human-rights-norms%E2%82%AC%80%9C/> (for an argument on how the human rights duty of care flowing from the UNGPBHR differs from the tests employed by common law domestic legal systems, referring to the UNGPBHR, *supra* note 791, which calls on business enterprises to respect human rights “wherever they operate” (*id.* princ. 11), whether “through a corporate group or individually” (*id.* princ. 14), and irrespective of “ownership or structure” (*id.* princ. 14)).

1153. Christelle Coslin et al., *Duty of Care and Vigilance in Human Rights Matters: From an International Impulse to European Implementations*, 1 RED 71–77 (2020) (for an analysis of domestic case law and legislative enactments establishing a human rights duty of care).

1154. *Vedanta Resources PLC v. Lungowe*, [2019] UKSC 20, [2019] 2 W.L.R. 1051, ¶¶ 44–65 (U.K.).

1155. *Id.* ¶¶ 1–4.

activities of its foreign subsidiary because a “sufficient level of intervention” by the parent company in the subsidiary’s operations was shown.¹¹⁵⁶

(8) Establishing liability for a breach of a duty of care is crucial as corporations often operate through intricate group structures, establishing subsidiaries in various countries and conducting business through extensive supply chains involving contractors or partners in different jurisdictions,¹¹⁵⁷ with implications for the human rights of future generations. Companies should avoid the structuring of complex arrangements to evade accountability for any violations of the human rights of future generations, especially along their supply chains. For example, with global supply chains of food production, the Special Rapporteur on the right to food, Michael Fakhri, indicated:

Industrial intensification also made farmers dependent on the expensive inputs provided by agrochemical companies. Four agrochemical companies control 60 per cent of the global seed market and 75 per cent of the global pesticides market. Such market concentration means that a small number of companies will unfairly control the price of seeds. Any increase in seed (and other input) prices makes it harder for small farmers to access seeds, as witnessed during supply chain disruptions related to the coronavirus disease (COVID-19) pandemic. The “Big Four” also produce most of the agrochemicals associated with genetically modified seeds. Those agrochemicals pollute the environment and reduce biodiversity, which lowers agricultural resilience, making farms more vulnerable to climate change shocks. The increasing use of pesticides contributes to harm to the health of agricultural workers, farmers and communities.¹¹⁵⁸

(9) Given the reality sketched by the Special Rapporteur, which highlights the potential of businesses violating the human rights of disadvantaged groups intergenerationally, Principle 25 (b) highlights that corporations are required to carry out human rights due diligence to assess and address the risks and impacts associated with their activities on the human rights of future generations. In addition, businesses have a duty of care in the operations of subsidiaries and suppliers, to ensure that their conduct does not entrench systemic disadvantage, for example, by evading labor laws or enabling child labor.¹¹⁵⁹

(10) Principle 25 (c) provides that non-State actors who breach their duties and responsibilities toward future generations should be held accountable under international law. As part of their duty to protect against business-related human rights abuses, States must take appropriate steps—whether international, regional, and domestic, as well as judicial, administrative, legislative, or other appropriate means—to ensure that when such abuses occur, monitoring is carried out to prevent or address human rights abuses affecting future generations, and to effectively remedy such abuses.¹¹⁶⁰ In addition, States should take steps to ensure that international accountability

1156. *Id.* ¶ 61.

1157. DAVID BILCHITZ, *FUNDAMENTAL RIGHTS AND THE LEGAL OBLIGATION OF BUSINESS* 418–20 (2022); Coomans et al., *Filling Gaps*, *supra* note 4, at 459–67.

1158. Special Rapporteur on the Right to Food, *Seeds, Right to Life and Farmers’ Rights*, ¶ 18, U.N. Doc. A/HRC/49/43 (2021) (citations omitted).

1159. See, e.g., ILO Res. on Decent Work in Global Supply Chains, ILO Gen. Conf., 105th Sess., ¶¶ 13, 16(c) (June 10, 2016); Comm. on Rts. Child, *General Recommendation No. 15*, *supra* note 209, ¶¶ 80–81.

1160. See, e.g., UNGPBHR, *supra* note 791, princ. 1, 5, 25–31, cmt. at 6–7, 22–27; Comm. on Rts. Child, *General Comment No. 16*, *supra* note 75, ¶¶ 66–72, 76–77; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 14–23, 33–35, 38–75; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 37*, *supra* note 71, ¶ 51(d). See also Mariëtte van Huijstee & Joseph Wilde-Ramsing, *Remedy is the Reason: Non-Judicial Grievance Mechanisms and Access to Remedy*, in *RESEARCH HANDBOOK ON HUMAN RIGHTS AND BUSINESS* 471–91 (Surya Deva & David Birchall eds., 2020). These obligations must similarly apply to the human rights of future generations.

mechanisms are in place to hold non-State actors accountable under international law for breaches of their duties toward future generations.¹¹⁶¹

26. *Obligations of Intergovernmental Organizations*

- a) *States and international institutions of which they are members must create an enabling global environment with the aim of achieving the full realization of human rights of future generations.*
- b) *International financial institutions and other inter-governmental and supranational institutions are subjects of international law and have a duty to not impair the ability of their members to comply with their legal obligations. They must accordingly respect the human rights of future generations, and engage in conduct consistent with the realization of their rights. They must comply with all obligations imposed by the general rules of international law and ensure access to remedies for any violations of their obligations toward future generations.*
- c) *International financial institutions and other inter-governmental and supranational institutions must ensure that their policies, practices, and economic reform measures will contribute to the realization of, and not undermine, the human rights obligations of States toward future generations. They must refrain from designing, adopting, financing, and implementing policies or measures that, directly or indirectly, impair the enjoyment of human rights by future generations.*
- d) *Inter-governmental and supranational institutions, at the global and regional level, should support efforts by States to uphold the rights of future generations including through multilateral cooperation. Such support should include technical cooperation, financial assistance, institutional capacity development, knowledge sharing, exchange of experiences, and transfer of technology.*
- e) *International financial institutions and other inter-governmental and supranational institutions must adopt effective measures to protect decision-making processes and spaces from undue corporate influence or corporate capture which nullifies or impairs the human rights of future generations.*

Commentary

(1) Similar to Principle 24, Principle 26 establishes that States and the international organizations of which they are part must internalize the human rights of future generations by creating an enabling global environment aimed at achieving the full realization of human rights for present and future generations.¹¹⁶² This Principle complements other Principles that emphasize the shared responsibility of promoting and protecting the human rights of future generations among States and international organizations, which are key institutional stakeholders and

1161. See, e.g., UNGPBHR, *supra* note 791, princ. 27–30, cmt. at 24–27; Comm. on Rts. Child, *General Comment No. 16*, *supra* note 75, ¶¶ 61(d), 68, 71–72; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶¶ 38–44, 51–57. See BILCHITZ, *FUNDAMENTAL RIGHTS AND OBLIGATION OF BUSINESS*, *supra* note 1157, at 446–56 (for proposals to establish appropriate international accountability mechanisms, with some institutional examples aligned with human rights principles); Stéfanie Khoury & David Whyte, *New Mechanisms of Accountability for Corporate Violations of Human Rights*, Univ. of Liverpool 3–6 (2018) (providing proposals for specialized chambers in regional and international legal forums). These obligations and proposals must apply to both present and future generations in the context of human rights violations.

1162. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 14*, *supra* note 284, ¶¶ 42 (with regard to the right to the highest attainable standard of health).

representatives of the present generation.¹¹⁶³ Article 13 of the Vienna Declaration and Program of Action commits to this shared responsibility, stating:

There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights.¹¹⁶⁴

The shared responsibility is not only necessary for the realization of the human rights of future generations, but also legally obligated.¹¹⁶⁵ The constitutions and constitutive international agreements of several international organizations include their commitment toward their human rights obligations, which must extend to future generations as human rights holders as established in these Principles. For instance, the UN, including its specialized agencies, is bound by human rights through various articles of the UN Charter.¹¹⁶⁶ Specifically, Article 57 of the UN Charter states:

The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations.

Thus, specialized agencies—such as the Food and Agriculture Organization (UNFAO), International Labour Organization, UN Educational, Scientific and Cultural Organization, World Health Organization, World Bank Group, and the International Monetary Fund—are obligated to ensure that their conduct is consistent with the principles of international law, including human rights, as one of the purposes of the UN, specifically through international economic and social cooperation.¹¹⁶⁷

(2) Principle 26 (a) refers to the obligations of both States and the international institutions themselves. Regarding the former, the Principle relies on the International Law Commission's Articles on the Responsibility of International Organizations, which stipulate:

A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.¹¹⁶⁸

States must not, for example, by voting in favor or endorsing a consensus on a decision, direct an international organization to act contrary to the human rights of present and future

1163. See Commentary, Princs. 8, 22.

1164. Vienna Declaration, *supra* note 242, art. 27.

1165. See Special Rapporteur on Extreme Poverty and Human Rights, *Eradicating Poverty Beyond Growth*, ¶¶ 3, 11–15, 55–58, U.N. Doc. A/HRC/56/61 (2024) (on international organizations' role in structuring exploitative and unsustainable global trade and economic processes); Lucy Williams, *Beyond the State: Holding International Institutions and Private Entities Accountable for Poverty Alleviation*, in RESEARCH HANDBOOK ON HUMAN RIGHTS AND POVERTY 550, 553 (Martha F. Davis et al. eds., 2021). The legal bases for the human rights obligations of international organizations toward future generations are elaborated upon in Khalfan & Seiderman, *Extraterritorial Human Rights Obligations*, *supra* note 666, at 32–33; Simma & Alston, *The Sources of Human Rights Law*, *supra* note 666, 100–02.

1166. U.N. Charter, *supra* note 28, arts. 1(3), 55–63.

1167. U.N. Charter, *supra* note 28, arts. 1(3), 55(c); *Statement on Public Debt, Austerity Measures and the ICESCR*, ¶ 8, U.N. Doc. E/C.12/2016/1 (2016).

1168. See Draft Articles on the Responsibility of International Organizations, with Commentaries art. 61, *Report of the International Law Commission on the Work of Its Sixty-Third Session*, 66 U.N. GAOR Supp. No. 10, at 1, U.N. Doc. A/66/10 (2011), *reprinted in* [2011] 2 Y.B. Int'l L. Comm'n, U.N. Doc. A/CN.4/SER.A/2011/Add.1.

generations.¹¹⁶⁹ States must therefore take positive steps, including opposing any policies and programs within the organization that may foreseeably impair the enjoyment of the human rights of future generations, or proposing due diligence measures to prevent such interference.¹¹⁷⁰ Principle 26 reflects the position that international organizations typically do not have the mandate to protect and fulfill rights in the same manner that States do, but they can have significant influence or control over the ability of States to do so. As articulated by the Committee on Economic, Social and Cultural Rights:

In discharging their duty to comply with human rights under international law, international institutions are not exercising powers that they do not have, nor are they taking into account considerations they would be obliged to ignore based on their statutes; rather, it is in the exercise of the powers that have been delegated to them by their member States that they should refrain from adopting measures that would result in human rights violations.¹¹⁷¹

(3) There are situations where international organizations may exercise governmental functions. In such cases, States that grant them this jurisdiction must, in order to act consistently with their own human rights obligations, require, as a condition of granting that authority, that the international organization respects and ensures the human rights of present and future generations over whose rights it has control.¹¹⁷² The Committee on Economic, Social and Cultural Rights has highlighted that States Parties would breach international law if they were to delegate powers to any international organization without ensuring that those powers are exercised in a manner that does not infringe on human rights.¹¹⁷³ In addition, international organizations themselves are bound by the human rights of present and future generations. In this respect, the International Court of Justice has held that international organizations are “bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.”¹¹⁷⁴ International organizations, including international financial institutions and other inter-governmental and supranational institutions, are thus subjects of international law and have an obligation not to impair the ability of their members to comply with their legal obligations toward present and future generations.¹¹⁷⁵ International organizations must comply with all obligations imposed by the general rules of international law and ensure access to remedies for any violations of their obligations toward future generations. Principle 26 thus requires international organizations to strengthen and move beyond first-level accountability, such as internal review and monitoring

1169. See, e.g., *Statement on Public Debt, Austerity Measures and the ICESCR*, ¶ 9, U.N. Doc. E/C.12/2016/1 (2016); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶ 83.

1170. E.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 12*, *supra* note 39, ¶ 41; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 13*, *supra* note 586, ¶ 56; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 14*, *supra* note 284, ¶ 39; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 36; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 23*, *supra* note 865, ¶ 71; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 30*, *supra* note 1065, ¶ 14.

1171. *Statement on Public Debt, Austerity Measures and the ICESCR*, ¶ 8, U.N. Doc. E/C.12/2016/1 (2016).

1172. For instance, in the case of limited government capacity for realizing children’s rights to education, an adequate standard of living, and the highest attainable standard of health under the CRC, *supra* note 12, arts. 24, 27–29, see *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, U.N. GAOR, Comm. on the Rts. of the Child, 39th Sess., ¶¶ 42–43, 45, 49, U.N. Doc. CRC/GC/2005/6 (2005).

1173. *Statement on Public Debt, Austerity Measures and the ICESCR*, ¶ 9, U.N. Doc. E/C.12/2016/1 (2016).

1174. Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, 1980 I.C.J. Rep. 73, ¶ 37.

1175. For human rights standards, see, e.g., Afr. Comm’n H.P.R., *General Comment No. 7*, *supra* note 1108, ¶ 66(b); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 41; Comm. on Rts. Child, *General Comment No. 19*, *supra* note 77, ¶ 39.

mechanisms, when the rights of present and future generations are alleged to be infringed.¹¹⁷⁶ International organizations should also incorporate second and third-level remedial and reparative accountability measures, ensuring access to remedies for breaches of international and human rights law,¹¹⁷⁷ including those of future generations.

(4) Principle 26 acknowledges that the conduct of international organizations could lead to infringements of the human rights of present and future generations. Conversely, Principle 26 also acknowledges that the conduct of international organizations could positively impact the realization of the human rights of future generations. Following this, Principle 26 (b) indicates that international financial institutions and other inter-governmental and supranational institutions must ensure that their conduct, including their policies, practices, and economic reform measures, support the realization of, and do not undermine the human rights obligations of States toward future generations. For example, in relation to the right to adequate food, the Committee on Economic, Social and Cultural Rights has noted that the role of specialized UN agencies is particularly important in cooperating with States to provide disaster relief and humanitarian assistance in times of emergency.¹¹⁷⁸ However, the Committee highlighted that products included in international food trade or aid programs must be safe and culturally acceptable to the recipient populations and should be provided in a manner that does not adversely affect local producers and local markets.¹¹⁷⁹ To this end, international organizations must conduct impact assessments to refrain from designing, adopting, financing, and implementing policies or measures that, directly or indirectly, impair the enjoyment of human rights by future generations.¹¹⁸⁰ As noted by the Special Rapporteur on the right to development, Surya Deva, impact assessments must consider how the conduct of present generations, including international organizations, in the areas of, for example, “urban planning, biodiversity, automation, energy, infrastructure, trade, weapons, development finance and public debt will affect the rights of future generations.”¹¹⁸¹

(5) As noted above, international organizations can also have a positive impact on the realization of the rights of future generations. Principle 26 (d) therefore restates the position in international human rights and environmental law that inter-governmental and supranational institutions, should support efforts by States to uphold the rights of future generations including through multilateral cooperation.¹¹⁸² This cooperation must occur on the global, regional, and sub-regional levels and involve various mechanisms, agreements, and actions aimed at addressing

1176. Gudrun M. Zagel, *International Organizations and Human Rights: The Role of the UN Covenants in Overcoming the Accountability Gap*, 36 *Nordic J. Hum. Rts.*, 74–90 (2018); Kristen E. Boon & Frédéric Mégret, *New Approaches to the Accountability of International Organizations*, 16 *Int’l Orgs. Rev.* 1–10 (2019).

1177. For these proposals within the UN system specifically, see Alyssa Yamamoto, *UN-Apologetic: International Organization Accountability and Apologies for Human Rights Violations*, 20 *J. Int’l L.* 45–67 (2024).

1178. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 12*, *supra* note 39, ¶ 38.

1179. *Id.* ¶ 39.

1180. For the need for international organizations to conduct impact assessments in the context of children’s rights, see, e.g., Comm. on Rts. Child, *General Comment No. 16*, *supra* note 75, ¶¶ 47–48.

1181. Special Rapporteur on the Right to Development, *Children and Future Generations*, ¶¶ 70, 80–81, 89, U.N. Doc. A/HRC/57/43 (2024).

1182. See, e.g., UNFCCC, *supra* note 98, art. 4(1)(f), (3), (4); Paris Agreement, *supra* note 99, arts. 9–11; 2030 Agenda for Sustainable Development, *supra* note 335, SDG 17; Rio Declaration on Environment and Development, *supra* note 97, princs. 7, 9; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 19*, *supra* note 65, ¶¶ 56, 64–65; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 14*, *supra* note 284, ¶ 50; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 18*, *supra* note 653, ¶ 30.

the human rights challenges of present and future generations that transcend national borders. In the case of the UN, the Special Rapporteur on the right to development, Surya Deva, has recommended that the Secretary-General appoint a Special Envoy on future generations to “ensure that the human rights of future generations are mainstreamed into the work of all United Nations entities and other international and regional organizations.”¹¹⁸³

(6) Several international and regional human rights bodies have indicated that supportive efforts by international organizations should include technical cooperation, financial assistance, institutional capacity development, knowledge-sharing, exchange of experiences and transfer of technology.¹¹⁸⁴ For example, in the context of pandemics, international organizations must support States by providing technical cooperation in developing and distributing vaccines, offering financial assistance to strengthen healthcare systems, and facilitating the exchange of knowledge and experiences on managing public health crises.¹¹⁸⁵ In addition, institutional capacity development is essential for building robust health infrastructure to prevent or withstand future pandemics, while the transfer of technology, such as medical equipment, diagnostic tools, and medical research ensures that States are equipped to protect the health rights of present and future generations.¹¹⁸⁶ These collaborative efforts are vital in preparing for and mitigating the impacts of pandemics, thereby safeguarding the human rights of future generations.

(7) International financial institutions and other inter-governmental and supranational institutions must adopt effective measures to protect decision-making processes and spaces from undue corporate influence or corporate capture that nullifies or impairs the human rights of future generations.¹¹⁸⁷ Undue corporate capture or influence includes instances when private industry and businesses use their political influence within international organizations to take control of decision-making processes, spaces, and ultimate outcomes that undermine the human rights of future generations.¹¹⁸⁸ To illustrate, the Special Rapporteur on the right to food, Michael Fakhri, expressed concern regarding agreements between the UNFAO and an international trade association of agrochemical companies, which includes some of the world’s largest agricultural

1183. Special Rapporteur on the Right to Development, *Children and Future Generations*, ¶ 94, U.N. Doc. A/HRC/57/43 (2024).

1184. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 60; *General Comment No. 3: HIV/AIDS and the Rights of the Child*, U.N. GAR, Comm. on Rts. Child, 32nd Sess., ¶ 41, U.N. Doc. CRC/GC/2003/3 (2003); Comm. on Rts. Child, *General Comment No. 5*, *supra* note 918, ¶¶ 63–64; *General Comment No. 9: The Rights of Children with Disabilities*, U.N. GAOR, Comm. on Rts. Child, 43rd Sess., ¶ 22, U.N. Doc. CRC/C/GC/9 (2006); Comm. on Elim. Discrim. Against Women, *General Recommendation No. 37*, *supra* note 71, ¶ 46(g); Comm. on Elim. Racial Discrim., *General Recommendation No. 29*, *supra* note 284, ¶ 7(ii); Comm. on Elim. Racial Discrim., *General Recommendation No. 34*, *supra* note 596, ¶ 54; Comm. on Rts. People with Disabilities, *General Comment No. 2*, *supra* note 1033, ¶ 47.

1185. E.g., *Statement on Universal and Equitable Access to Vaccines for COVID-19*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., U.N. Doc. E/C.12/2020/2 (Nov. 27, 2020); *Global Health and Foreign Policy: Strengthening the Management of International Health Crises*, adopted Dec. 17, 2015, G.A. Res. 70/183, U.N. GAOR, 70th Sess., Agenda Item 125, pmbl. ¶¶ 10–12, 15–16, arts. 4, 9–11, U.N. Doc. A/RES/70/183 (Feb. 18, 2016).

1186. See, e.g., Revised Draft of the Negotiating Text of the World Health Organization Pandemic Agreement, WHO, 9th Mtg., Agenda Item 2, arts. 9–12, 16, WHO Doc. A/INB/9/3 (Mar. 13, 2024).

1187. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 33; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶ 43; Convention against Corruption, *supra* note 1007, arts. 14(4), 16.

1188. See, e.g., *Working Group on Business and Human Rights, Corporate Influence in the Political and Regulatory Sphere*, ¶ 46, U.N. Doc. A/77/201 (2022); Flavio L. S. Valente, *The Corporate Capture of Food and Nutrition Governance Revisited: A Threat to Human Rights and People’s Sovereignty*, Colloq. Paper No. 62 Int’l Inst. Soc. Stud 1–8 (2016).

biotechnology and pesticide businesses.¹¹⁸⁹ The Special Rapporteur recognized the importance of cooperation and consultation among governments, international organizations, farmers, businesses, and civil society in addressing the challenges posed by highly hazardous pesticides, but expressed his concern that institutionalized agreements between pesticide industry lobbyists and UN specialized agencies “may raise questions of conflict of interest and result in undue corporate influence over international policymaking.”¹¹⁹⁰

27. *Responsibilities and Duties of Individuals and Communities*

- a) *Every person has responsibilities and duties to themselves, their community and society, and to humanity as a whole, including duties to respect and promote the human rights of future generations.*
- b) *Civil society organizations and non-governmental bodies have responsibilities to respect and promote the human rights of future generations.*
- c) *National human rights institutions must have the competence to oversee decisions that may have an impact on future generations. They should incorporate the human rights of future generations in their plans and programs, and should put in place mechanisms to monitor and report on the activities, decisions or policies (and the implementation thereof) by States’ authorities which affect the human rights of future generations.*
- d) *The recognition of individual and community responsibilities in no way diminishes the obligations of States to respect, protect, and fulfill or the duties of non-state actors to respect the human rights of future generations.*

Commentary

(1) Principle 27 recognizes that individuals, communities, civil society organizations, non-governmental bodies, and NHRIs have responsibilities and duties to respect and promote the human rights of future generations. While States are the primary duty bearers under international human rights law, the role of individuals and communities is increasingly acknowledged in international instruments and jurisprudence. The UDHR lays the foundation for individual duties in human rights law. The Preamble proclaims that “every individual and every organ of society” shall strive to promote respect for human rights and freedoms and to secure their universal and effective recognition and observance.¹¹⁹¹ Furthermore, Article 29 (1) of the UDHR stipulates: “Everyone has duties to the community in which alone the free and full development of his personality is possible.” This text reflects the contributions of a diverse group of representatives and Mahatma Gandhi’s intellectual influence on the drafting of the UDHR, emphasizing the indissoluble link between rights and duties.¹¹⁹² This recognition of individual duties is reaffirmed in the ICCPR and the ICESCR, which both note in their preambles that “the individual, having

1189. Special Rapporteur on the Right to Food, *Seeds, Right to Life and Farmers’ Rights*, ¶ 92, U.N. Doc. A/HRC/49/43 (2021).

1190. *Id.*

1191. UDHR, *supra* note 29, pmb. ¶ 8.

1192. *E.g.*, Ashish Kothari & Miloon Kothari, *We Are Doomed If, in the Post-Covid-19 World, We Cannot Abandon Non-Essentials*, OPEN DEMOCRACY (Aug. 10, 2020), <https://www.opendemocracy.net/en/oureconomy/we-are-doomed-if-post-covid-19-world-we-cannot-abandon-non-essentials/>; SCHABAS, UDHR TRAVAUX, *supra* note 44, at 105, 281, 712, 733, 853, 1053, 1325, 1453, 1673–84, 1945, 1973, 2041, 2057, 2108–09, 2205, 2780, 3057, 3067 (for the different proposals regarding the inclusion of individual duties).

duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized” in the Covenants.¹¹⁹³

(2) The concept of rights and duties can be articulated at several levels: from the individual to other individuals, from the individual to the community, between the State and the individual or community, and between nation-states.¹¹⁹⁴ This multi-level approach underscores the interconnectedness of rights and duties across different actors and entities. In 1949, at the request of the UN General Assembly, the International Law Commission prepared the Draft Declaration on the Rights and Duties of States, acknowledging the importance of duties at the state level.¹¹⁹⁵

(3) At the regional level, individual duties are particularly well-established in the inter-American and African human rights systems. The American Declaration of the Rights and Duties of Man emphasizes that “the fulfillment of duty by each individual is a prerequisite to the rights of all,” and that “rights and duties are interrelated in every social and political activity of man.”¹¹⁹⁶ It includes specific duties, such as the duty of the individual to society, and the duty to serve the community and nation.¹¹⁹⁷ Similarly, the African Charter devotes an entire chapter to individual duties.¹¹⁹⁸ Article 27 (1) of the Charter stipulates that “[e]very individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.” Article 29 elaborates on specific duties, including the duty to preserve and strengthen positive African cultural values and to contribute to the promotion and achievement of African unity. The inclusion of individual duties in the African Charter reflects African philosophical traditions that emphasize the interconnectedness of individuals and the community. As Kwame Gyan observes, the Charter’s emphasis on duties underscores the belief that rights and duties are inseparable and that the fulfillment of duties by individuals is essential for the realization of rights.¹¹⁹⁹

(4) The inclusion of individual duties in human rights law reflects an understanding that the realization of human rights requires the active participation, collective action, and engagement of all members of society. Principle 27 (a) acknowledges that individuals are not only rights holders but also bear responsibilities and duties to themselves, their community and society, humanity as a whole, and future generations.¹²⁰⁰ This perspective aligns with the notion expressed in the 2003 Declaration on Human Rights and Human Social Responsibilities, which emphasizes that rights and social responsibilities are indissolubly linked, mutually reinforcing each other, and deserving of express recognition of their equal value and importance to life in

1193. ICCPR, *supra* note 14, pmb. ¶ 5; ICESCR, *supra* note 14, pmb. ¶ 5.

1194. *E.g.*, A Universal Declaration of Human Responsibilities, proposed by the InterAction Council, 1 Sept. 1997, <https://www.interactioncouncil.org/sites/default/files/udhr.pdf>.

1195. Draft Declaration on Rights and Duties of States, *adopted* Dec. 6 1949, G.A. Res. 375(IV), 270th plen. mtg., U.N. GAOR, 4th Sess., annex, U.N. Doc. A/RES/375 (1949).

1196. American Declaration of the Rights and Duties of Man pmb. ¶ 2, *adopted* May 2, 1948, 9th Int’l Conf. American States, O.A.S. Res. XXX, O.A.S. Off. Rec. OEA/Ser.L.V/II.23, doc. 21 rev. 6 (1948).

1197. *Id.* arts. XXIX, XXXIV.

1198. African Charter, *supra* note 144, ch. II.

1199. Kwame Gyan, *The Duty (Responsibility) of the Individual in the African Charter on Human and Peoples’ Rights*, 21 U. Ghana L.J. 156, 157–66 (2000–02).

1200. *See generally* AARON X. FELLMETH, PARADIGMS OF INTERNATIONAL HUMAN RIGHTS LAW 37–60 (2016).

society.¹²⁰¹ The Declaration highlights the importance of extra-legal perspectives based on morality, human solidarity, and equity, aimed at strengthening the international legal framework of human rights for the benefit of all of humanity and future generations.¹²⁰²

(5) In the context of the human rights of future generations, recognizing individual and community responsibilities is particularly important. The actions and decisions of individuals and communities today have profound and long-lasting impacts on future generations. Principle 27 (a) thus recognizes that every person has duties to respect and promote the human rights of future generations, reflecting the ethical imperative to consider the long-term consequences of our conduct.¹²⁰³ This idea is also reflected in various religious and faith traditions, which suggest a reciprocal relationship between rights and duties, often asserting that the performance of duties is a precondition for the attainment of rights.¹²⁰⁴ For example, the *Towards a Global Ethic: An Initial Declaration*, adopted by the World Parliament of Religions, underscores the shared responsibilities of all individuals to uphold ethical principles, promoting the well-being of the global community and future generations.¹²⁰⁵

(6) Principle 27 reinforces Principle 8, stipulating that each generational cohort—including individuals and communities, civil society, and international organizations across a continuum of time—must work both individually and collectively to act as responsible trustees of the Earth, fulfilling their duties in harmony with all living beings and Nature.¹²⁰⁶ Principle 27 finds expression in the Hague Principles, which stipulates that human rights “include responsibilities for the Earth community and the entire Earth system. These imply obligations and new opportunities for all human beings to act as Earth trustees.”¹²⁰⁷ Similarly, the Earth Charter underscores that “[e]very individual, family, organization, and community has a vital role to play”¹²⁰⁸ in harmonizing “freedom with the common good” and “short-term objectives with long-term goals,” reflecting a “responsibility to one another, to the greater community of life, and to future generations.”¹²⁰⁹ Principle 27 is also an expression of a variety of Indigenous Peoples’ knowledge systems, which recognize responsibilities and duties that temporally expand the conception of the human person, encompassing past, present, and future generations, and acknowledge individuals’ interconnectedness with community and the necessity of living in harmony with the natural environment.¹²¹⁰ In this context, the articulation of rights and responsibilities includes humankind’s responsibilities to Nature and all living beings, reflecting

1201. *Final Report of the Special Rapporteur of the Commission on Human Rights, Declaration on Human Rights and Human Responsibilities*, Miguel Alfonso Martínez, U.N. ESCOR, Comm’n on Hum. Rts., 59th Sess., annex I, U.N. Doc. E/CN.4/2003/105 (Mar. 17, 2003).

1202. *Id.* pmb. ¶¶ 1, 7–8, 10, arts. 1–8, 11, 15, 20, 23. See Commentary, Princ. 10.

1203. See, e.g., ELIZABETH CRIPPS, CLIMATE CHANGE & THE MORAL AGENT: INDIVIDUAL DUTIES IN AN INTERDEPENDENT WORLD (2013).

1204. See Commentary, Princ. 2, ¶¶ 34–41.

1205. *Towards a Global Ethic: An Initial Declaration*, Parliament of the World’s Religions (1993), <https://parliamentofreligions.org/wp-content/uploads/2023/05/Global-Ethic-PDF-2020-Update.pdf>.

1206. See Commentary, Princ. 8, ¶ 4.

1207. Hague Principles on Trusteeship, *supra* note 224, backgr., at 1. See also *id.* princs. 1.1, 2.1, 3.1.

1208. Earth Charter, *supra* note 215, at 4.

1209. *Id.* pmb. ¶ 1.

1210. See Commentary, Princ. 2, ¶¶ 27–33, Princ. 11, ¶¶ 1–8.

a reciprocal and interdependent relationship that is key to ensuring the well-being of future generations.¹²¹¹

(7) Principle 27 (a) finds further support in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on the Right and Responsibility to Promote and Protect Human Rights), which elaborates on the role of individuals and organizations.¹²¹² The Declaration recognizes “the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels.”¹²¹³ Article 18 stipulates:

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms, and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.¹²¹⁴

(8) Civil society organizations and non-governmental bodies are essential actors in promoting and protecting human rights, including those of future generations. Principle 27 (b) recognizes their responsibilities in this regard. These organizations can raise awareness, advocate for policy changes, monitor State compliance, facilitate participation of marginalized groups, and enable the representation of future generations. The UN Declaration on the Right and Responsibility to Promote and Protect Human Rights underscores their vital role in safeguarding democracy and human rights.¹²¹⁵

(9) NHRIs have a crucial role in overseeing decisions that may impact future generations.¹²¹⁶ Principle 27 (c) emphasizes that NHRIs should incorporate the human rights of future generations into their plans and programs and establish mechanisms to monitor and report on relevant activities. The UN Principles Relating to the Status of National Institutions set out the minimum standards for the roles and responsibilities of NHRIs, including broad mandates to promote and protect human rights, advise governments, and engage with international bodies.¹²¹⁷ NHRIs can play a critical role in protecting the human rights of future generations by monitoring and reporting on the long-term impacts of laws, policies, and practices.¹²¹⁸ They can serve as a bridge between government and civil society, facilitating participation and dialogue and ensuring that the voices of marginalized and disadvantaged groups are heard in decision-making processes.

1211. See Commentary, Princ. 4(d), ¶¶ 5–6.

1212. UN Declaration on the Right and Responsibility to Promote and Protect Human Rights, *supra* note 998.

1213. *Id.* pmb. ¶ 8.

1214. *Id.* art. 18.

1215. *Id.* arts. 1, 5, 8(2), 16, 18(2)–(3).

1216. See Commentary, Princ. 22(d), ¶ 14.

1217. Paris Principles on NHRIs, *supra* note 975.

1218. See Commentary, Princ. 22(d), ¶ 14. See also *infra* note 1348 and accompanying text.

(10) Principle 27 (d) clarifies that the recognition of individual and community responsibilities and duties does not diminish the obligations of States to respect, protect, and fulfill, nor the duties of non-State actors to respect the human rights of future generations. States remain the primary duty bearers under international human rights law, and their obligations are not negated or lessened by the duties of individuals or communities. Principle 27 (d) implicitly cautions against an overemphasis on duties and should not be used to justify limitations on human rights or to divert attention from State obligations.¹²¹⁹

(11) Principle 27 should be read alongside Principles 6 and 7 to ensure that individual duties are asymmetrically conceived,¹²²⁰ granting disadvantaged individuals, communities, and groups the right to have States, non-State actors, and other advantaged individuals, communities, and groups either refrain from perpetuating or address the barriers that sustain their exclusion.¹²²¹ This approach allows disadvantaged groups autonomy and agency in exercising their human rights duties, ensuring that all members of humanity have their rights realized and that present disadvantages are not passed on to future generations. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa offers an innovative example, affirming the equal moral worth of persons with disabilities and fostering conditions that enable them to exercise their duties with autonomy and agency.¹²²² Article 31 stipulates:

1. States Parties shall recognise that persons with disabilities have duties on an equal basis with other person[s] as elaborated in the African Charter.
2. States Parties shall ensure that persons with disabilities are rendered the forms of assistance and support, including reasonable accommodations, which they may require in performance of such duties.

Similarly, the UN Secretary-General's report on intergenerational solidarity and the needs of future generations noted that impoverished people and disadvantaged groups "should not be called upon to make sacrifices for the long-term good of humanity" in the "name of future generations."¹²²³ These Principles recognize that the participatory rights of marginalized individuals, communities, and groups must be guaranteed, not only to address current disadvantages but also to seek their guidance for the long-term eradication of existing inequalities.¹²²⁴

(12) Principle 27, in its entirety, endorses a shared commitment at all levels of society to respect, protect, and fulfill the human rights of future generations. While States have the primary obligation, the active participation and engagement of individuals, communities, civil society organizations, non-governmental bodies, and NHRIs are essential to ensure that the rights of future generations are upheld. This shared responsibility is evidenced in SDG 12, which

1219. See, e.g., Ben Saul, *In the Shadow of Human Rights: Human Duties, Obligations, and Responsibilities*, 32 Colum. Hum. Rts. L. Rev. 565–624 (2001).

1220. See, e.g., OCHE ONAZI, AN AFRICAN PATH TO DISABILITY JUSTICE: COMMUNITY, RELATIONSHIPS AND OBLIGATIONS 128–133 (2020).

1221. See Commentary Princs. 6(d), 7(a), (c). See also Commentary, Princ. 20(b).

1222. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted Jan. 29, 2018.

1223. *Intergenerational Solidarity and the Needs of Future Generations*, ¶ 16, U.N. Doc. A/68/322 (2013).

1224. See *supra* Pmb. ¶¶ VII, IX; Commentary Princs. 11(a), 12(a), 22(c)–(e), 34.

specifically commits everyone to “ensure sustainable consumption and production patterns,”¹²²⁵ as highlighted in the 2030 Agenda for Sustainable Development:

We commit to making fundamental changes in the way that our societies produce and consume goods and services. Governments, international organizations, the business sector and other non-State actors and individuals must contribute to changing unsustainable consumption and production patterns.¹²²⁶

Article 12 of the UNESCO Declaration on Future Generations further asserts that “States, the United Nations system, other inter-governmental and non-governmental organizations, individuals, public and private bodies should assume their full responsibilities” toward future generations.¹²²⁷ Similarly, General Comment No 7 of the African Commission emphasizes that individual duties affirm the African Charter’s central object and purpose, “which is for all members of society – individuals, families, local communities, non-governmental organisations, and the private business sector – to work collaboratively to achieve the universal enjoyment of human rights on the continent.”¹²²⁸ These sources underscore the critical importance of shared responsibility across all sectors of society, highlighting that only through collective efforts can the complex and intergenerational challenges facing humanity be effectively addressed.

(13) In sum, Principle 27 emphasizes that the rights of the individual and their duties are indissolubly linked. They are mutually reinforcing and deserve express recognition of their equal value and importance to life in society. This connection constitutes a key element in the cohesion of the social fabric that ensures the harmonious existence of any community and is the fundamental basis for a democratic society, in which all members enjoy equal rights and are subject to responsibilities. Every person has duties to themselves, their specific community or society, humanity, and future generations, particularly in terms of their actions toward the conservation and improvement of the natural environment that surrounds them, the planet as a whole, and the common cultural heritage of humankind.

IV. ACCOUNTABILITY AND REMEDIES

28. *Incorporation and Implementation in Domestic Law*

States must ensure that the human rights of future generations are effectively incorporated into their domestic law, or otherwise recognized in their domestic legal system.

Commentary

(1) States have an obligation under international human rights law to recognize and give effect to human rights within domestic law. As stipulated in Article 2 (2) of the ICCPR:

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.¹²²⁹

1225. 2030 Agenda for Sustainable Development, *supra* note 335.

1226. *Id.* ¶ 28.

1227. UNESCO Declaration on Future Generations, *supra* note 88.

1228. Afr. Comm’n H.P.R., *General Comment No. 7*, *supra* note 1108, ¶ 62.

1229. ICCPR, *supra* note 14, art. 2(2).

(2) The ICESCR also obligates States Parties to take steps to realize the rights in the Covenant “by all appropriate means, including particularly the adoption of legislative measures.”¹²³⁰ Similar obligations to adopt legislative or other measures to give effect to human rights are enshrined in the CERD,¹²³¹ CEDAW,¹²³² CRC,¹²³³ CAT,¹²³⁴ and CRPD,¹²³⁵ as well as the American Convention on Human Rights,¹²³⁶ and the African Charter.¹²³⁷ The same obligations apply to the rights of future generations. In other words, States must adopt legislative and other appropriate and necessary measures to give full effect to the rights of future generations.

(3) International treaties seldom stipulate how each State is to implement its norms within its domestic legal order. This flexibility of choice in means of implementation is best evidenced by General Comment 9 of the Committee on Economic, Social and Cultural Rights, which confirms that the Covenant “adopts a broad and flexible approach” where domestic particularities can be taken into account.¹²³⁸ The Committee has laid out the following three principles: (1) the means chosen must be adequate to fulfill State obligations under the Covenant, and the need to ensure justiciability is relevant when choosing how to implement the Covenant; (2) account should be taken of the means which have proved to be most effective in the country concerned in incorporating other human rights treaties; (3) while the Covenant does not formally obligate States to incorporate its provisions in domestic law, such an approach is desirable.¹²³⁹ Similarly, while States have flexibility in how to incorporate the human rights of future generations into domestic law, they must abide by these principles. Moreover, national framework laws, which typically include basic legal principles and competences, a declaration of objectives and policies, the establishment of relevant institutions, and a definition of procedural principles,¹²⁴⁰ are often highly desirable and even necessary measures to protect human rights.¹²⁴¹ National framework legislation on future generations, such as Wales’s Well-Being of Future Generations Act,¹²⁴² is essential to protect the rights of future generations against the tendency of present policy frameworks to favor short-term interests.

(4) As the Committee on Economic, Social and Cultural Rights has stated, issues related to the domestic application of human rights treaties must be interpreted in light of two fundamentals of international law.¹²⁴³ First, a State may not escape its responsibilities under international law by invoking its domestic laws.¹²⁴⁴ Therefore, States may not appeal to domestic provisions, or the lack thereof, to avoid or delay the domestic implementation of their international responsibilities

1230. ICESCR, *supra* note 14, art. 2(1).

1231. CERD, *supra* note 33, art. 2.

1232. CEDAW, *supra* note 33, art. 2.

1233. CRC, *supra* note 12, arts. 2(2), 4.

1234. CAT, *supra* note 33, art. 2(1).

1235. CRPD, *supra* note 33, art. 4(a).

1236. American Convention on Human Rights, *supra* note 81, art. 2.

1237. African Charter, *supra* note 144, art. 1.

1238. *General Comment No. 9*, *supra* note 806, ¶ 1.

1239. *Id.* ¶ ¶ 7–8.

1240. See, e.g., Fons Coomans & Kofi Yakpo, *A Framework Law on the Right to Food – An International and South African Perspective*, 4 Afr. Hum. Rts. L. J. 17, 20 (2004) (for a general definition of a framework law).

1241. E.g., *General Comment No. 12*, *supra* note 39, ¶ 29; *General comment No. 25*, *supra* note 39, ¶ ¶ 85–89.

1242. Well-being of Future Generations (Wales) Act 2015, c. 2 (U.K.) (while this Act establishes institutions to monitor the extent to which public bodies set and meet their well-being targets, it does not procure mechanisms through which representatives of future generations can seek remedies for violations of their rights).

1243. *General Comment No. 9*, *supra* note 806, ¶ 3.

1244. See VCLT, *supra* note 38, art. 31(3)(b). See also Int’l L. Comm’n ARSIWA, *supra* note 660, art. 3.

to respect, protect, and fulfill the human rights of future generations. Secondly, any chosen method of domestic implementation must ensure that “appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.”¹²⁴⁵ The right to effective remedies is an essential aspect of international human rights law.¹²⁴⁶ As such, no State can abide by its international obligations to respect, protect, and fulfill the rights of future generations unless its domestic legal order includes administrative or judicial mechanisms, institutions, and other processes securing the ability of future generations and their representatives to seek redress for violations.

29. *Victims*

For the purposes of the present section, “victims” of violations refers to future generations, including persons, groups, and Peoples, who face a substantial and reasonably foreseeable risk of suffering human rights violations, whether individually or collectively, through acts or omissions of present States and non-State actors. The designation of persons, groups and Peoples subject to such violations as victims for the purposes of this section refers to their entitlement to hold accountable those responsible for violations of their rights, while affirming their dignity, autonomy and self-determination.

Commentary

(1) Principle 29 is embedded within accountability mechanisms that ensure representation for future generations, including when their rights are violated. For individuals and groups seeking redress for violations of their rights, the designation of victim status is often crucial.¹²⁴⁷ When victim status is acquired, it evidences an entitlement to reparations for injuries resulting from wrongful acts or omissions.¹²⁴⁸ This entitlement depends on establishing a sufficiently close link between human rights violations and wrongful acts or omissions.¹²⁴⁹

(2) Victim status is linked to standing requirements, addressed in Principle 30 and the accompanying Commentary. This section discusses future generations’ entitlement to reparations contingent on establishing a link between the violations and the wrongful acts or omissions of

1245. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 9*, *supra* note 806, ¶ 2.

1246. See Commentary, Princ. 30.

1247. CHRISTIAN TOMUSCHAT, *HUMAN RIGHTS: BETWEEN IDEALISM AND REALISM* 209–11 (3d ed., 2013). Most international human rights treaty monitoring mechanisms are triggered by “individuals or groups of individuals” who claim to be a “victim” of a violation of their human rights. See, e.g., CERD, *supra* note 33, art. 14(1); CAT, *supra* note 33, art. 22; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women art. 2, *adopted* Oct. 6, 1999, G.A. Res. 54/4, U.N. GAOR, 58th plen. mtg., U.N. Doc. A/RES/54/4 (Oct. 15, 1999) (*entered into force* Dec. 22, 2000); Optional Protocol to the International Covenant on Economic, Social and Cultural Rights art. 2, *adopted* Dec. 10, 2008, G.A. Res. 63/117, U.N. GAOR, 63d Sess., U.N. Doc. A/RES/63/117 (Dec. 10, 2008) (*entered into force* May 5, 2013); Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure art. 5, *adopted* Dec. 19, 2011, G.A. Res. 66/138, U.N. GAOR, 66th Sess., U.N. Doc. A/RES/66/138 (Jan. 27, 2012) (*entered into force* Apr. 14, 2014); Optional Protocol to the Convention on the Rights of Persons with Disabilities art. 1(1), *adopted* Dec. 13, 2006, G.A. Res. 61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/RES/61/106 (Jan. 24, 2007) (*entered into force* May 3, 2008).

1248. Int’l L. Comm’n ARSIWA, *supra* note 660, art. 31(1).

1249. Monica Feria-Tinta, *The Future of Environmental Cases in the European Court of Human Rights: Extraterritoriality, Victim Status, Treaty Interpretation, Attribution, Imminence and ‘Due Diligence’ in Climate Change Cases*, 13 J. Hum. Rts. & Env’t 172, 180–82, 185–89 (2022).

those responsible for upholding future generations' rights. Assigning victim status in relevant instances cannot easily be separated from determining the content of substantive rights and the corresponding obligations of duty bearers.¹²⁵⁰ The Principles and Commentary address the content of these rights and obligations throughout and Principle 29 must be read alongside these determinations.

(3) The practice of human rights bodies has occasionally shed light on questions of victimhood of future generations. A notable instance is *E.H.P. v. Canada*, where the author submitted a complaint to the Human Rights Committee on her own behalf and on behalf of "present and future generations" of Port Hope, Ontario.¹²⁵¹ She claimed that the dumping of toxic waste in Port Hope threatened her right to life, as well as the right to life of present and future generations.¹²⁵² The Committee recognized the author's victim status for herself and those residents who authorized her to submit the complaint. The complaint was deemed inadmissible because the complainant failed to exhaust domestic remedies. Nonetheless, the Committee stated that the "question as to whether a communication can be submitted on behalf of 'future generations' does not have to be resolved in the circumstances of the present case."¹²⁵³ The Committee thus did not reject the possibility of attributing victim status to future generations in relevant instances.

(4) The term "victim" is not a static concept and must be assessed contextually in an "evolutive manner," reflecting contemporary conditions without applying it with "excessive formalism."¹²⁵⁴ Establishing victim status for future generations requires a significant level of justification accompanied by an evidentiary burden by those representing future generations' rights.¹²⁵⁵ Principle 29 sets the causation threshold for establishing victim status for future generations at a "substantial and reasonably foreseeable risk" of suffering human rights violations. The reference to "substantial and reasonably foreseeable risk" reflects Principle 9 on Prevention and Precaution. The Principle on Prevention and Precaution holds that the absence of certainty about a causal connection, or indeed the materialization of harm, does not deprive future generations of the reparations to which victims of human rights violations are entitled.¹²⁵⁶ This approach is consistent with established human rights jurisprudence indicating that human rights violations can occur as a result of a State's failure to protect against a serious and substantial risk of harm,¹²⁵⁷ and that such harm can be individual, collective, or both.¹²⁵⁸

1250. On the difficulty of separating the victim status inquiry with substantive rights considerations, see, e.g., *Verein Klimaseniorinnen v. Switz.*, App. No. 53600/20, Eur. Ct. H.R., ¶¶ 458–59 (2024).

1251. Communication No. 67/1980 (*E.H.P. v. Can.*), U.N. GAOR, Hum. Rts. Comm., 17th Sess., ¶ 1.1 U.N. Doc. CCPR/C/17/D/67/1980 OP/1 (1982).

1252. *Id.* ¶¶ 1.2–4.

1253. *Id.* ¶ 8.

1254. E.g., *Albert v. Hung.*, App. No. 5294/14, Eur. Ct. H.R. (GC) ¶ 121 (2020); *Lizarraga v. Spain*, App. No. 62543/00, Eur. Ct. H.R., ¶ 38 (2004); *Derneği v. Turk.*, App. No. 49874/99, Eur. Ct. H.R., ¶ 39 (2006); *Bellili v. Spain*, Comm. on Econ., Soc. & Cult. Rts., ¶ 11.5 (2017).

1255. For a general consideration of justification and evidentiary burdens for acquiring victim status, see *G.P. v. It.*, Comm. on Econ., Soc. & Cult. Rts., ¶¶ 8.4–6 (2019).

1256. See Commentary, Princ. 9. See also Dinah Shelton, *Complexities and Uncertainties in Matters of Human Rights and the Environment: Identifying the Judicial Role*, in *THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT* 113–17 (John H. Knox & Ramin Pejan eds., 2018).

1257. See, e.g., *Tatar v. Rom.*, App. No. 67021/01, Eur. Ct. H.R., ¶ 107 (2009).

1258. See *Mayagna (Sumo) Awastingni Community v. Nicar.*, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶¶ 142–55 (2001) (to honor the tradition of communal land ownership among many Indigenous Peoples, the Court interpreted

(5) The allegation of a violation must be substantial, not merely a general “hypothetical future harm” or a “theoretical possibility,” but a “real risk” of “irreparable harm that adversely affect[s] the enjoyment of any right,” or is “imminent.”¹²⁵⁹ “Substantial” further means that the harm or the risk of harm must be “more than detectable” and “significant” but need not be a high level of “serious” in establishing that the violation has led to, or risks leading to, detrimental effects on the human rights of future generations.¹²⁶⁰ The harm can strike at any material, physical, moral, or psychological aspect of future generations’ human rights,¹²⁶¹ depriving future generations of the natural and cultural resources necessary to determine their lives and futures.¹²⁶²

(6) International human rights jurisprudence attributes victim status to present generations as “potential victims” even when the alleged violation has not yet materialized.¹²⁶³ Attributing “potential victim” status to future generations should not immediately be considered as an abstract and hypothetical future harm. The status of “potential victim” emerges from any wrongful action or omission in the present that violates or holds the risk of violating rights. The fact that future generations do not yet exist and cannot represent themselves in the present does not imply that the violation of their human rights can only be registered once they come into existence.¹²⁶⁴ Moreover, merely because future generations’ *existence* is remote does not mean that any violations of their rights lack material and temporal proximity in terms of *causation*.¹²⁶⁵ The harm must however be “substantial” and pose a “reasonably foreseeable risk” of causing a violation.

the right to property enshrined in Article 21 of the American Convention on Human Rights, *supra* note 81, as having a collective dimension, and ordered the State to provide financial reparations for immaterial damages to the collective interest of the Awas Tingni Community); *Saramaka v. Surin.*, Preliminary Objections, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 92–95 (Aug. 12, 2008); *Moiwana Community v. Surin.*, Preliminary Objections, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶¶ 143, 215 (2005); *SERAC v. Nigeria*, Afr. Comm’n H.P.R., ¶¶ 45, 63, 68 (2001); *Endorois v. Kenya*, Afr. Comm’n H.P.R., ¶ 157 (2009); *Afr. Comm’n H.P.R. v. Kenya*, Reparations, App. No. 006/2012, Afr. Ct. H.P.R., ¶ 112 (2022); Comm. on Econ., Soc., and Cult. Rts., *General comment No. 26*, *supra* note 187, ¶¶ 16–17.

1259. *Teitiota v. N.Z.*, Hum. Rts. Comm., ¶¶ 8.4–.5 (2020); Hum. Rts. Comm., *General Comment No. 31*, *supra* note 653, ¶ 12; *G.P. v. It.*, Comm. on Econ., Soc. & Cult. Rts., ¶ 6.15 (2019).
1260. See e.g., Communication No. 524/1992 (*E.C.W. v. Neth.*), U.N. GAOR, Hum. Rts. Comm., 49th Sess., ¶¶ 4.2–.3, U.N. Doc. CCPR/C/49/D/524/1992 (Nov. 3, 1993); *Sacchi v. Arg.*, *supra* note 352, ¶ 10.12; *Teitiota v. N.Z.*, Hum. Rts. Comm., ¶¶ 9.7–.13 (2020); Environment and Human Rights Advisory Opinion, 2017 Inter-Am. Ct. H.R., ¶ 136.
1261. Int’l L. Comm’n ARSIWA, *supra* note 660, art. 31(2); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, *adopted* Nov. 29, 1985, G.A. Res. 40/34, U.N. GAOR, 40th Sess., annex ¶¶ 1–2, U.N. Doc. A/RES/40/34 (1985).
1262. *Neubauer v. Germ.*, *supra* note 22, ¶ 23. *Agostinho v. Port.*, App. No. 29371/20, Eur. Ct. H.R., ¶¶ 17, 21, 26(d), 90, 112 (2024) (although the case was found inadmissible due to non-exhaustion of domestic remedies, the applicants alleged that environmental degradation caused serious material, psychological, and intergenerational harms). See also Commentary, *Princs.* 5–6.
1263. E.g., *Norris v. Ir.*, App. No. 10581/83, 13 Eur. H.R. Rep. 186, ¶ 171 (1988); *Soering v. U.K.*, App. No. 14038/88, 11 Eur. H.R. Rep. 439 (1989); *Zakharov v. Russ.*, App. No. 47143/06, Eur. Ct. H.R. (GC) ¶ 171 (Dec. 4, 2015); Communication No. 30/2003 (*Jewish Community of Oslo v. Nor.*), U.N. GAOR, Comm. on Elim. Racial Discrim., Aug. 15, 2005, 67th Sess., ¶¶ 3.2–.5, 5.4, 7.3–.4, U.N. Doc. CERD/C/67/D/30/2003 (Aug. 22, 2005).
1264. George Letsas, *Did the Court in Klimaseniorinnen Create An Actio Popularis?*, EJIL:Talk! (May 13, 2024), <https://www.ejiltalk.org/did-the-court-in-klimaseniorinnen-create-an-actio-popularis/>.
1265. *Id.*

(7) *Billy v. Australia* illustrates the threshold of “substantial and reasonably foreseeable risk” of harm.¹²⁶⁶ In this case, the Human Rights Committee held that the State’s failure to institute adequate mitigation and adaptation measures to address the effects of climate change violated the rights of present and future generations of the Indigenous inhabitants of Boigu, Poruma, Warraber, and Masig, four small, low-lying islands in Australia’s Torres Strait region.¹²⁶⁷ The Indigenous group claimed that changes in weather patterns directly harmed their livelihoods, culture, and traditional way of life, affecting both present and future generations.¹²⁶⁸ The State argued that the complainants should not be granted victim status as the allegations of violations represented possible impacts “but not existing or imminent violations.”¹²⁶⁹ The State further argued that “adverse effects now may, subject to contingencies, worsen in future. The possible impacts of a slow onset process do not confer victim status on the authors.”¹²⁷⁰ The Islanders argued that their claims were based on current and imminent threats to the rights of their present and future generations of Indigenous People.¹²⁷¹ They noted that if imminence were interpreted without considering the context of intergenerational harms arising from the State’s omissions, they would be “forced to wait until their culture and land have been lost” to acquire victim status.¹²⁷² This, they alleged, would result in the complete loss of their lives and livelihoods, depriving both present and future generations.¹²⁷³ The Human Rights Committee ultimately held that the authors had sufficiently demonstrated the existence of real adverse effects that they had personally and actually suffered as a result of disruptive climate events and slow-onset processes such as flooding and erosion.¹²⁷⁴ The Committee further held that the risk of impairment of the Indigenous Peoples’ rights, “owing to alleged serious adverse impacts that have already occurred and are *ongoing*, is more than a theoretical possibility.”¹²⁷⁵

(8) The requirement of imminence for granting victim status to future generations should not be interpreted as implying that the risk must materialize within a short period of time.¹²⁷⁶ Instead, imminence indicates that the risk is directly threatening the human rights of future generations. In *Urgenda v. Netherlands*, the Dutch Supreme Court indicated:

the term “real and immediate risk” must be understood to refer to a risk that is both genuine and imminent. The term “immediate” does not refer to imminence in the sense that the risk must materialise within a short period of time, but rather that the risk in question is directly threatening the persons involved. The protection of Article 2 [European Convention on Human Rights] also regards risks that may only materialise in the longer term.¹²⁷⁷

(9) Establishing that the harm future generations suffer or will suffer is more than a theoretical possibility requires demonstrating a “reasonably foreseeable risk.” In *Sacchi v. Argentina*, the Committee on the Rights of the Child elaborated on the “reasonably foreseeable” harm threshold,

1266. *Billy v. Austl.*, Hum. Rts. Comm. (2022).

1267. *Id.* ¶¶ 2.1–8, 8.12, 9.

1268. *Id.* ¶¶ 3.1–7.

1269. *Id.* ¶ 6.1.

1270. *Id.*

1271. *Id.* ¶¶ 5.2–8.

1272. *Id.* ¶ 5.3.

1273. *Id.*

1274. *Id.* ¶¶ 7.9–10.

1275. *Id.* ¶ 7.10 (emphasis added).

1276. *Feria-Tinta, Future of Environmental Cases*, *supra* note 1249, at 189.

1277. *Urgenda v. Neth.* 2015, *supra* note 122, ¶ 5.2.2 (citations omitted).

which had to be determined based on the facts to establish victim status.¹²⁷⁸ The Committee indicated that the harm the victims suffered or are likely to suffer must have been “reasonably foreseeable” to the State at the time of its action or inaction.¹²⁷⁹ The Committee attributed victim status to several children in part because of “the potential of climate change to affect them throughout their lifetime, in particular if immediate action is not taken.”¹²⁸⁰ Its decision on victim status further took account of children’s entitlement to special safeguards, which impose “heightened” obligations on States to protect children from foreseeable harm.¹²⁸¹ These heightened obligations likewise apply to future children, who qualify as victims of human rights violations when a State or States breach those obligations, thereby posing a serious, substantial, and reasonably foreseeable risk to the enjoyment of their rights.¹²⁸² The *Sacchi* case illustrates that when the obligations owed to future generations involve the prevention of harm requiring proactive measures,¹²⁸³ consideration must be given to the link between the harm and the breached obligation, taken together with the extent to which the harm is a reasonably foreseeable consequence of the action taken.¹²⁸⁴

(10) The consideration of reasonably foreseeable consequences of any act or omission rests on a “common sense ethics (and legal practice),” which holds “persons responsible for harms or risks they knowingly impose or could have reasonably foreseen.”¹²⁸⁵ In the context of the adverse effects of business activities on human rights, the Committee on the Economic, Social and Cultural Rights indicated that a State Party would be in breach of its obligations under the Covenant if it failed to take reasonable measures when the violation was “reasonably foreseeable.”¹²⁸⁶ The Committee highlighted the case of the well-documented risks of human rights violations associated with extractive industries where due diligence is required.¹²⁸⁷ Similarly, in *Portillo Caceres v. Paraguay*, concerning a peasant farming community negatively affected by agrotoxins due to the rise of agribusiness in the area, the Human Rights Committee held that the well-documented evidence of the negative impacts of agrotoxins posed a “reasonably foreseeable threat” to the peasant communities’ right to life.¹²⁸⁸ States and accountability forums must therefore pay attention to well-documented evidence when any act or the failure to act threatens the rights of future generations. It is also incumbent on duty bearers to take all necessary measures, such as impact assessments, where there is a substantial and

1278. *Sacchi v. Arg.*, *supra* note 352, ¶ 10.3.

1279. *Id.* ¶ 10.14.

1280. *Id.* ¶ 10.13.

1281. *Id.*

1282. See e.g., also *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 204–14, 231, 235–45 (2023).

1283. See e.g., *Öneryıldız v. Turk.*, App. No. 48939/99, Eur. Ct. H.R., ¶¶ 71, 89–90 (Nov. 30, 2004) (held that States have positive obligations for all life-threatening risks, including environmental risks).

1284. Margaretha Wewerinke-Singh, *State Responsibility for human Rights Violations Associated with Climate Change*, in THE ROUTLEDGE HANDBOOK OF HUMAN RIGHTS AND CLIMATE GOVERNANCE 75, 82–83 (Sébastien Duyck et al., 2018).

1285. Marc Fleurbaey et al., *Sustainable Development and Equity*, in CLIMATE CHANGE 2014: MITIGATION OF CLIMATE CHANGE (Working Grp. III Contribution to the *Fifth Assessment Report of the Intergovernmental Panel on Climate Change*) 283, 391 (Ottmar Edenhofer et al. eds., 2014).

1286. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 24*, *supra* note 284, ¶ 32.

1287. *Id.*

1288. *Portillo Caceres v. Para.*, Hum. Rts. Comm., ¶ 7.5 (2019).

reasonably foreseeable risk of violating the human rights of future generations of which the State was or should have been aware.¹²⁸⁹

(11) Accountability forums must pay particular attention to the “distinct representational disadvantage” future generations face when today’s actions and omissions do not sufficiently internalize their future impact.¹²⁹⁰ The representational disadvantage that future generations face today is vividly expressed in *Verein Klimaseniorinnen v. Switzerland* before the European Court of Human Rights.¹²⁹¹ In *Verein Klimaseniorinnen*, an association of senior women as well as four individual older women argued that the State failed to fulfill its positive obligations to protect the applicants against the adverse effects of climate change, which they alleged to have violated their rights to life, health, as well as private and family life.¹²⁹² The Court clarified the criteria for establishing victim status under Article 34 of the European Convention on Human Rights, applicable to both individual complainants and associations.¹²⁹³ The Court indicated that it is necessary to reconstruct the victim status criteria in the context of climate change where “intergenerational burden-sharing assumes particular importance.”¹²⁹⁴ Although the victim status of future generations was technically not before the Court, future generations played a noteworthy role in the Court’s considerations around the victim status criteria for both individuals and associations.¹²⁹⁵ The Court’s concern for future generations manifests in several points it expressly recognized. First, future generations will likely face an increasingly severe burden of the consequences arising from present failures and omissions.¹²⁹⁶ Second, the severe burden necessitates intergenerational burden-sharing, urging present generations to avoid imposing a disproportionate burden on future generations.¹²⁹⁷ Third, there is a danger that short-term interests and concerns may override and come at the expense of future generations.¹²⁹⁸ Fourth, future generations who will be most affected by today’s actions and inactions are unable to advocate for themselves.¹²⁹⁹ The risk of aggravating the consequences disproportionately borne by future generations¹³⁰⁰ renders their situation sufficiently serious to warrant attributing victim status to them in appropriate cases.

(12) Because future generations face a “distinct representational disadvantage” in the decision-making processes of today, Principle 29 emphasizes that attributing victim status to future generations refers to their entitlement to hold accountable those responsible for violating their rights, while affirming their dignity, autonomy, and self-determination. Principle 29 reinforces Principle 8 on Intergenerational Duties and Trusteeship, emphasizing an “intergenerational

1289. See Commentary, Princs. 20(c)(iv), 24(b).

1290. *Verein Klimaseniorinnen v. Switz.*, App. No. 53600/20, Eur. Ct. H.R., ¶ 484 (2024).

1291. *Id.*

1292. *Id.* ¶ 3 (European Convention on Human Rights, *supra* note 204, arts. 2, 6, 8, 13).

1293. *Id.* ¶¶ 478–503.

1294. *Id.* ¶ 484.

1295. See also Letsas, *Did the Court in Klimaseniorinnen Create An Actio Popularis*, *supra* note 1264; Aoife Nolan, *Inter-Generational Equity, Future Generations and Democracy in the European Court of Human Rights’ Klimaseniorinnen Decision*, EJIL:Talk! (Apr., 15, 2024), www.ejiltalk.org/inter-generational-equity-future-generations-and-democracy-in-the-european-court-of-human-rights-klimaseniorinnen-decision/.

1296. *Verein Klimaseniorinnen v. Switz.*, App. No. 53600/20, Eur. Ct. H.R., ¶ 421 (2024).

1297. *Id.* ¶ 420.

1298. *Id.* ¶ 421.

1299. *Id.* ¶ 484.

1300. *Id.* ¶ 420.

partnership.”¹³⁰¹ Under this partnership, present generations hold the Earth, its ecosystems, inhabitants, and the cultural resource base in trust for future generations. Future generations thus have full dignity and autonomy where they must inherit their just share of natural resources and cultural heritage to self-determine their chosen destinies. Principle 29 serves as a vital mechanism for implementing intergenerational duties and trusteeship, allowing future generations to hold present generations accountable for preserving and improving the conditions they will inherit.

(13) Principle 29 must not be utilized at the expense of victims of violations faced by present generations. Due to entrenched intragenerational injustices, any act or omission that has violated or threatens to violate the human rights of present generations will require establishing their victim status. Where there is considerable overlap in today’s inactions and actions violating both present and future generations’ rights, attributing victim status to future generations must not detract from the full recognition and reparations to which present generations are entitled. Instead, attributing victim status to future generations should strengthen the claims of the victims of present generations and forge an important link between intra- and intergenerational human rights obligations and state responsibility.

30. *Effective Remedies*

Everyone has the right to an effective remedy for conduct violating their human rights. To that end, States must:

- a) *Provide adequate judicial, quasi-judicial and administrative mechanisms for the supervision and enforcement of the human rights of future generations;*
- b) *Investigate, adjudicate, and redress violations of future generations’ human rights caused or contributed to by States or private actors;*
- c) *Ensure that victims (and their representatives) have standing before courts and human rights bodies, and take all necessary measures to ensure that representatives are able to enforce the human rights of future generations through the judicial system;*
- d) *Ensure access to justice, including by removing barriers to access and providing appropriate and adequate assistance to victims’ representatives;*
- e) *Disseminate, through public and private mechanisms, information about all available remedies for violations of the human rights of future generations;*
- f) *Where the harm resulting from an alleged violation is expected to occur on the territory of a State other than the State where the harmful conduct took place, any State concerned must provide the victims with access to justice, whereby the obligation to provide reparations falls on the States responsible for the harmful conduct.*

Commentary

(1) Principle 30 builds on the maxim *ubi jus ibi remedium*, expressing that where there is a right, there is a remedy.¹³⁰² In international human rights law, the right to a remedy is a substantive

1301. See Commentary, Princ. 8 (quoting Brown Weiss, *Planetary Trust*, *supra* note 368, at 498).

1302. *Ubi jus ibi remedium*, BLACK’S LAW DICTIONARY 1294 (6th ed., 1990).

right that is well-established in both custom¹³⁰³ and treaties. The most comprehensive treaty provisions on remedies are found in the ICCPR,¹³⁰⁴ which protects the right to a remedy in three separate articles. The broadest of these is Article 2 (3), which spells out the obligations of States Parties to the Covenant to ensure that any person whose rights are violated is to have an effective and enforceable remedy.¹³⁰⁵ The right to a remedy is also contained in Articles 13 and 14 of CAT,¹³⁰⁶ Article 6 of CERD,¹³⁰⁷ Article 39 of CRC,¹³⁰⁸ Articles 25 and 63 (1) of the American Convention on Human Rights,¹³⁰⁹ Article 7 (1) (a) read with Article 1 of the African Charter,¹³¹⁰ Articles 12 and 23 of the Arab Charter on Human Rights,¹³¹¹ Articles 5 (5), 13 and 41 of the European Convention on Human Rights,¹³¹² Article 47 of the Charter of Fundamental Rights of the European Union,¹³¹³ and Article 27 of the Vienna Declaration and Program of Action.¹³¹⁴ In the case of the ICESCR, the right is inherent in the Covenant.¹³¹⁵

(2) The right to a remedy encompasses the two elements of access to justice and substantive redress.¹³¹⁶ Access to justice refers to the process of hearing and deciding claims of human rights violations, while substantive redress concerns the actual relief granted to the victim of a human rights violation.¹³¹⁷ Paragraphs (a) to (e) of Principle 30 focus on access to justice, while paragraph (f) concerns the substantive redress to which victims are entitled. In each case, adequate remedies are designed to “make the victim whole,” while at the same time “[expressing] opprobrium to the wrongdoer from the perspective of society as a whole” and thus affirming, reinforcing, and concretizing “the fundamental values of society.”¹³¹⁸ When applied to future generations, this understanding underscores the need for effective measures and institutional mechanisms that can anticipate and address violations of future generations’ rights.

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1303. Principles on the Right to a Remedy and Reparation, *supra* note 1073, princ. 11 (pertaining to gross violations of international human rights law and international crimes). See also *Moiwana Village v. Surin*, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 169 (2005). See generally DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 103 (2d ed., 2010).
1304. ICCPR, *supra* note 14, arts. 2(3), 26.
1305. *Id.* art. 2(3)(c). See generally Martin Scheinin, *The Human Rights Committee’s Pronouncements on the Right to an Effective Remedy: An Illustration of the Legal Nature of the Committee’s Work under the Optional Protocol*, in TOWARDS IMPLEMENTING UNIVERSAL HUMAN RIGHTS 101–03 (Nisuke Ando ed., 2004) (for a discussion of the evolution of the Committee’s position on the right to a remedy). See also SHELTON, REMEDIES, *supra* note 1303, at 50.
1306. CAT, *supra* note 33, arts. 13, 14.
1307. CERD, *supra* note 33, art. 6.
1308. CRC, *supra* note 12, art. 39.
1309. American Convention on Human Rights, *supra* note 81, arts. 25, 63(1).
1310. African Charter, *supra* note 144, arts. 1, 7(1)(a).
1311. Arab Charter on Human Rights, *supra* note 80, arts. 12, 23.
1312. European Convention on Human Rights, *supra* note 204, arts. 5(5), 13, 41.
1313. Charter of Fundamental Rights of the EU, *supra* note 212, art. 47.
1314. Vienna Declaration, *supra* note 242, art. 27.
1315. ICESCR, *supra* note 14. See, e.g., Comm. on Econ., Soc., and Cult. Rts., *General Comment No. 9*, *supra* note 806, ¶¶ 3, 9; Comm. on Econ., Soc., and Cult. Rts., *General Comment No. 12*, *supra* note 39, ¶ 32; *Maastricht Guidelines on Violations of ESCRs*, *supra* note 1, at 699.
1316. For an overview of global and regional human rights treaties that incorporate the right to a remedy, see SHELTON, REMEDIES, *supra* note 1303, at 113–20. See also JAMES CRAWFORD, THE INTERNATIONAL LAW COMMISSION’S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT, COMMENTARIES 95, ¶¶ 3–4 (2002).
1317. SHELTON, REMEDIES, *supra* note 1303, at 7.
1318. Dinah Shelton, *The Right to Reparations for Acts of Torture: What Right, What Remedies?*, 17 *Torture* 96–116 (2007).

Further, it highlights the need to ensure that present actions do not unduly compromise the ability of future generations to seek redress for violations of their rights in the future.

(3) Principle 30 (a) refers to the obligation of States to provide adequate judicial, quasi-judicial, and administrative mechanisms for the supervision and enforcement of the rights of future generations. It reflects the understanding of human rights bodies that the right to a remedy entails access to such mechanisms. For example, the Human Rights Committee has stipulated that States Parties must give effect to the right to a remedy by “establish[ing] appropriate judicial and administrative mechanisms for addressing claims of human rights violations under domestic law.”¹³¹⁹ The Committee on Economic, Social and Cultural Rights has highlighted the importance of non-judicial remedies, including administrative mechanisms such as environmental protection agencies and financial supervision authorities, in providing effective remedies to victims of Covenant rights violations by business actors and ensuring accountability for such violations.¹³²⁰ Further, the Committee has stressed the need for remedies for Indigenous victims to be developed in collaboration with the Indigenous Peoples concerned through their own respective institutions, thereby ensuring that barriers such as language are addressed.¹³²¹ In each instance, the procedural attributes of the right to a remedy include “the ability to invoke the guaranteed right, procedural fairness, the capability of the remedial body to afford redress, and effectiveness in fact.”¹³²²

(4) The importance of access to independent judicial or administrative bodies that can adjudicate human rights violations is such that the element of enforceability is sometimes considered a fundamental element of legal rights.¹³²³ Without this element, the obligations of States risk being mischaracterized as voluntary commitments that may be upheld or disregarded at will.¹³²⁴ Reflecting this understanding, the African Commission has stressed that “[t]he rights and freedoms of individuals enshrined in the [African] Charter can only be fully realised if governments provide structures which enable them to seek redress if they are violated.”¹³²⁵ In a similar vein, the European Court of Human Rights has emphasized that the purpose of human rights law is “[to guarantee] not rights that are theoretical or illusory but rights that are practical and effective.”¹³²⁶ For future generations, judicial, administrative, and quasi-judicial bodies also have a critical role to play in clarifying rights and obligations, which have so far remained uncertain. This is particularly pressing considering that institutions have not done so adequately thus far.

(5) Providing future generations with access to justice requires institutional innovation to grapple with epistemological uncertainties and questions of representation.¹³²⁷ Such innovation may be

1319. *General Comment No. 31, supra* note 653, ¶ 80.

1320. *General Comment No. 24, supra* note 284, ¶¶ 53–54.

1321. *Id.* ¶¶ 52, 56.

1322. SHELTON, REMEDIES, *supra* note 1303, at 109 (drawing on a comparison of international instruments and practice).

1323. *E.g.*, MORRIS GINSBERG, ON JUSTICE IN SOCIETY 74 (1965).

1324. SHELTON, REMEDIES, *supra* note 1303, at 98.

1325. Communication No. 147/95, 149/96 (Jawara v. Gam.), Afr. Comm’n H.P.R., ¶ 74 (May 11, 2000). *See also* SERAC v. Nigeria, Afr. Comm’n H.P.R., ¶¶ 46, 61 (2001).

1326. *See, e.g.*, Airey v. Ir., 32 Eur. Ct. H.R. (ser. A) ¶ 24 (1979). *See also* Stephen Humphreys, *Introduction: Human Rights and Climate Change*, in HUMAN RIGHTS AND CLIMATE CHANGE 11 (Stephen Humphreys ed., 2010).

1327. *See* Commentary, Princ. 22.

viewed as a form of positive measures aimed at correcting the structural disadvantages suffered by future generations in societies that predominantly focus on short-term interests.¹³²⁸ Principle 30 sets out the minimum criteria derived from international human rights law regarding access to justice for future generations, while leaving discretion to States regarding the mechanisms and procedures through which future generations' right to a remedy can be realized. These criteria must be viewed together with States' obligations to ensure an effective investigation of violations, to make all facts about violations known within a reasonable time, and to ensure institutional memory of such violations. Further, they must be read in conjunction with States' obligations to ensure effective access to justice for Indigenous Peoples, which, as the Committee on Economic, Social and Cultural Rights has noted, may require the recognition of customary laws, traditions, and practices of Indigenous Peoples and customary ownership over their lands and natural resources in judicial proceedings, along with accommodations such as the use of Indigenous languages and interpreters in courts.¹³²⁹

(6) Paragraphs (b) and (c) of Principle 30 address the question of standing or *locus standi* and representation of future generations. Standing, which concerns the ability of an individual or entity to bring a complaint before a court or quasi-judicial body, presents a key challenge for future generations, as they naturally cannot defend their own rights in legal proceedings.¹³³⁰ However, this challenge is not unique to future generations, as some children, persons with disabilities, persons in a state of unconsciousness, disappeared persons, and persons in *incommunicado* situations are likewise unable to represent themselves in legal processes. In these instances, legal mechanisms typically allow for a representative to bring a case on the affected person's behalf. There is also a growing recognition in domestic judicial, as well as regional and international quasi-judicial settings, that the rights of Nature and other non-human living beings have and should have standing to vindicate the rights that accrue to them through designated representatives or otherwise persons advocating on their behalf.¹³³¹ Additionally, some jurisdictions allow for collective or class actions where claims can be advanced on behalf of a large group of persons or in defense of a public interest, including future generations.¹³³² Even where standing provisions in some jurisdictional settings do not allow for collective or class actions, the European Court of Human Rights, for example, has indicated that due to future generations' "distinct representational disadvantage," granting relevant associations standing in accordance with procedural requirements is essential because:

collective action through associations or other interest groups may be one of the only means through which the voice of those at a distinct representational disadvantage can be heard and through which they can seek to influence the relevant decision-making processes.¹³³³

(7) One avenue of securing representation of future generations in legal processes is for States to designate appropriate representatives such as ombudspersons, guardians, trustees, or

1328. See Commentary, Princs. 6(d), 7.

1329. *General Comment No. 24*, *supra* note 284, ¶ 52.

1330. *E.g.*, Bradford C. Mank, *Standing and Future Generations: Does Massachusetts v. EPA Open Standing for Generations to Come?*, 34 Colum. J. Env't L. 2–97 (2009); Iñigo González-Ricoy, *Constitutionalizing Intergenerational Provisions*, in INSTITUTIONS FOR FUTURE GENERATIONS 170–83 (Iñigo González-Ricoy & Axel Gosseries eds., 2016).

1331. See cases cited *supra* note 216.

1332. See, *e.g.*, *Urgenda v. Neth.* 2015, *supra* note 122, ¶ 4.57; *Future Generations v. Colom. Min. of Env't*, *supra* note 22, ¶ 11.2.

1333. *Verein Klimaseniorinnen v. Switz.*, App. No. 53600/20, Eur. Ct. H.R., ¶ 484 (2024).

commissioners, with standing to institute proceedings on behalf of future generations.¹³³⁴ Further, as Principle 22 (c) highlights, since present children, adolescents, and youth occupy a proximate position to future generations, when they advocate for human rights on behalf of themselves and future generations, their rights to be heard and other participatory rights must be protected and promoted. This includes granting them standing in legal processes for this purpose when they choose to do so. There are already promising developments in this field. For instance, in 2018, the Colombian Supreme Court of Justice upheld a constitutional *tutela* action brought by several youth plaintiffs on behalf of both present and future generations, challenging the government's failure to comply with Amazon deforestation commitments.¹³³⁵ In 2020, the Ontario Superior Court of Justice in Canada dismissed Ontario's motion to strike out an application by seven children and youth challenging Ontario's greenhouse gas emissions targets and plans.¹³³⁶ One of the grounds for the motion to strike out this application was that the applicants did not have standing to bring the application on behalf of future generations. In their reasons for the decision, the Court held that the Applicants met the test for public interest standing on behalf of future generations.¹³³⁷ In sum, the fact that future generations do not yet exist and are therefore unable to represent themselves should not preclude standing to representatives of future generations in appropriate instances. Instead, paragraph (c) of Principle 30 requires States to develop legal mechanisms to allow for the representation of future generations and assist representatives to ensure the vindication of future generations' rights.

(8) Paragraph (d) of Principle 30 obligates States to ensure that representatives can enforce the rights of future generations.¹³³⁸ Such representatives may include public officials, agencies, civil society organizations, or Indigenous Peoples, and local communities deciding to represent future generations, in addition to designated representatives like ombudspersons, guardians, and trustees. States are required to ensure that future generations have adequate representation and to remove any and all obstacles these representatives may face in vindicating the rights of future generations through judicial systems. This requirement concerns not just obstacles relating to standing but extends to other procedural obstacles to the enforcement of future generations' rights, such as obstacles relating to jurisdiction, as well as practical obstacles such as those relating to the costs of bringing legal proceedings.

(9) Paragraph (e) of Principle 30 requires States to disseminate information about all available remedies for violations of the rights of future generations through public and private mechanisms. It mirrors Principle 12 (a) of the Principles on the Right to a Remedy and Reparation.¹³³⁹

31. *State Responsibility*

A State is responsible for the breach of obligations to respect, protect and fulfill the rights of future generations from the moment that it fails to act in conformity with these obligations.

1334. See Commentary, Princ. 22(d).

1335. *Future Generations v. Colom. Min. of Env't*, *supra* note 22, at 3.

1336. *Mathur v. Ontario*, 202 O.N.S.C. (2020) (Can.).

1337. *Id.* ¶¶ 238–53.

1338. See Commentary, Princ. 22(b), (d).

1339. Principles on the Right to a Remedy and Reparation, *supra* note 1073, ¶ 12(a).

Commentary

(1) Principle 31 reflects the basic principle of general international law according to which state responsibility is incurred where an act attributable to a State breaches an obligation that is binding on the State at the time the conduct occurs. It also reflects established practice in international human rights law. For example, violations of the right to life are regularly established based on a State's failure to fulfill its positive obligations to protect the right to life, even if the victim's life has not ended.¹³⁴⁰ As the Commentary to Principle 29 establishes, international human rights jurisprudence allows for the designation of victim status for future generations, even in cases where the impairment of their right has not yet taken place, provided that the claimant demonstrated a substantial or a "real risk" of "irreparable harm," whether imminent or remote, that adversely affects or will affect the enjoyment of any rights, rather than a general "hypothetical future harm" or a "theoretical possibility."¹³⁴¹ In *Teitiota v. New Zealand* and *Billy v. Australia*, the Human Rights Committee considered that climate change created risks for the petitioners which were "real" and "more than a theoretical possibility," respectively.¹³⁴² In a similar vein, a State's decision to extradite an individual to a jurisdiction where they face a serious risk of being subjected to cruel, inhuman or degrading treatment constitutes a violation of the right to be free from such treatment, irrespective of whether the prohibited treatment subsequently occurs.¹³⁴³ In cases of torture, the mere fact of keeping in force or passing legislation contrary to the international prohibition of torture generates state responsibility.¹³⁴⁴ Thus, these human rights standards support the position that the non-existence of future generations does not mean that the conduct attributable to the violation of their human rights only engages state responsibility once they come into being, nor does the non-existence of future generations extinguish state responsibility for the attributable conduct. The fact that their existence is remote does not imply that the established causation of the conduct triggering state responsibility is materially and temporally remote. Moreover, States' obligations to respect, protect, and fulfill the human rights of future generations must be interpreted in light of Principle 9 on Prevention and Precaution. Precautionary measures must be taken even if there is a lack of scientific certainty with respect to the imminence or magnitude of the risks posed to human rights.

(2) Principle 31 and the established practice on which it builds may be seen as deviating from Article 14 (3) of the International Law Commission's ARSIWA, according to which "the breach of an international obligation requiring a state to prevent a given event occurs when the event occurs"¹³⁴⁵—a principle that was applied by the International Court of Justice in *Bosnia v. Serbia*.¹³⁴⁶ Insofar as Article 14 (3) of ARSIWA reflects general international law, international

1340. *Oyal v. Turk.*, App. No. 4864/05, Eur. Ct. H.R., ¶¶ 55–57 (2010).

1341. See Commentary, Princ. 29.

1342. *Teitiota v. N.Z.*, Hum. Rts. Comm., ¶¶ 4, 8.6 (2020); *Billy v. Austl.*, Hum. Rts. Comm., ¶ 7.10 (2022).

1343. *Soering v. U.K.*, 161 Eur. Ct. H.R. (ser. A), ¶¶ 80–111 (1989).

1344. *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgment, ¶ 150 (Int'l Crim. Trib. for the Former Yugoslavia, Dec. 10, 1998).

1345. Int'l L. Comm'n ARSIWA, *supra* note 660, art. 14 (3).

1346. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.)*, Provisional Measures, Order, 1993 I.C.J. 22, ¶ 431. This part of the ruling has been extensively criticized in the literature. See, e.g., Monika Ambrus, *The Precautionary Principle and a Fair Allocation of the Burden of Proof in International Environmental Law*, 21 Rev. Eur. Comp. & Int'l Env't L. 259, 266–67 (2012); Andrea Gattini, *Breach of the Obligation to Prevent and Reparation Thereof in the ICJ's Genocide Judgment*,

human rights law provides relevant *lex specialis* that renders the general law inapplicable. This *lex specialis* safeguards the purpose of international human rights law, which is to protect peoples and individuals from acts and omissions that would interfere with or violate their rights,¹³⁴⁷ including those of future generations. For future generations, ensuring that human rights obligations owed to them are enforceable in the present serves to safeguard the protection that human rights law entitles them to.

32. *Prevention, Cessation, Non-Repetition and Redress*

States' obligations to respect, protect, and fulfill the rights of future generations include, among others, the obligation to:

- a) *Take appropriate legislative and administrative and other measures to prevent violations, including the regulation of activities by non-state actors under their jurisdiction;*
- b) *Take effective measures aimed at the cessation and non-repetition of activities that risk harming the rights of future generations; including preliminary measures to prevent harm while remedial procedures are underway;*
- c) *Provide effective guarantees of non-repetition of violations;*
- d) *Provide adequate, effective, prompt and appropriate redress to victims, including reparation, as described below.*

Commentary

(1) Principle 32 (a) refers to States' obligations to prevent violations of the rights of future generations through appropriate measures, including legislative and administrative measures. Giving effect to this obligation requires monitoring and reviewing States' compliance with their obligations to respect, protect, and fulfill the rights of future generations, including through the use of structural, process, and outcome indicators, as well as benchmarks, data collection, and impact assessments. NHRIs and supervisory human rights bodies have a vital role to play in these processes.¹³⁴⁸ Indicators must be disaggregated according to the protected grounds of non-

18 Eur. J. Int'l L. 695, 701–02 (2007); Mark Gibney, *Genocide and State Responsibility*, 7 Hum. Rts. L. Rev. 760, 768–69 (2007).

1347. See *Mapiripán Massacre v. Colom.*, Judgment on Merits, Reparations, Costs, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 107 (Sept. 15, 2005) (“While the American Convention itself explicitly refers to the rules of general International Law for its interpretation and application, the obligations set forth in Articles 1(1) and 2 of the Convention are ultimately the basis for the establishment of the international responsibility of a State for abridgments to the Convention. Thus, said instrument constitutes *lex specialis* regarding State responsibility, in view of its special nature as an international human rights treaty *vis-à-vis* general International Law. Therefore, attribution of international responsibility to the State, as well as the scope and effects of the acknowledgment made in the instant case, must take place in light of the Convention itself”) (citations omitted). See also *Other Treaties Subject to the Advisory Jurisdiction of the Court*, Advisory Opinion OC-1/82, Inter-Am. Ct. H.R. (ser. A) No. 1, ¶ 24 (Sept. 24, 1982), reprinted in 3 Hum. Rts. L. J. 140 (1982) (emphasizing “the purpose of human rights treaties to guarantee the enjoyment of individual human beings of those rights and freedoms rather than to establish reciprocal relations between States”); *Effect of Reservations on the Entry into Force of the American Convention on Human Rights*, Advisory Opinion OC-2/82, Inter-Am. Ct. H.R. (ser. A) No. 2, ¶ 29 (Sept. 24, 1982) (stating that the object and purpose of “modern human rights treaties” is “the protection of basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States”).

1348. See, e.g., Paris Principles on NHRIs, *supra* note 975, pmb. ¶ 4, annex princ. 3; Hum. Rts. Comm., *General Comment No. 31*, *supra* note 653, ¶ 15; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 10*, *supra* note 975, ¶¶ 1, 3; Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶ 83; *General Recommendation No. 17: Establishment of National Institutions to Facilitate the Implementation of the*

discrimination.¹³⁴⁹ Processes to monitor and review compliance with the relevant obligations must also be transparent, allowing for the participation of civil society and affected communities.¹³⁵⁰

(2) The remaining paragraphs of Principle 32 are concerned with the legal consequences of violations of the rights of future generations. These legal consequences comprise obligations of cessation, non-repetition, and obligations of reparation.

(3) Principle 32 (b) concerns the obligation of cessation. The International Law Commission's ARSIWA stipulates that a State that violates its international obligations must continue to perform its original obligations,¹³⁵¹ and cease the wrongful conduct if it is ongoing.¹³⁵² The placement and treatment of cessation in ARSIWA clarifies that cessation is an inherent obligation of the responsible State and not a form of reparation. In terms of treaty obligations, the obligation of cessation is intrinsic to the principle of *pacta sunt servanda*,¹³⁵³ as outlined in the VCLT.¹³⁵⁴ The Human Rights Committee recognized the obligation of cessation as "an essential element of the human right to a remedy."¹³⁵⁵

(4) Given the importance of harm prevention to the protection of future generations' rights, the obligation of cessation entails an obligation to ensure that future generations can access

Convention, U.N. GAOR, Comm. on Elim. Racial Discrim., 42d Sess., ¶ 1(b)–(e), U.N. Doc. A/48/18 (1994); *General Comment No. 2: The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, U.N. GAOR, Comm. on Rts. Child, 32d Sess., ¶¶ 3, 19(a), (c), (g), 20, U.N. Doc. CRC/GC/2002/2 (2002); Comm. on Rts. People with Disabilities, *General Comment No. 7*, *supra* note 1033, ¶ 94(b), (d).

1349. See, e.g., Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 13*, *supra* note 586, ¶ 37; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 53; *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 34th Sess., ¶ 49, U.N. Doc. E/C.12/2005/4 (2005); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 19*, *supra* note 65, ¶ 75; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 20*, *supra* note 260, ¶ 41; *General Recommendation No. 23: Political and Public Life*, U.N. GAOR, Comm. on Elim. Discrim. Against Women, 16th Sess., ¶ 48(d), U.N. Doc. A/52/38 (1997); Comm. on Elim. Discrim. Against Women, *General Recommendation No. 24*, *supra* note 204, ¶ 9; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 25*, *supra* note 39, ¶ 35; Comm. on Rts. Child, *General Comment No. 16*, *supra* note 75, ¶ 14; Comm. on Elim. Racial Discrim., *General Recommendation No. 32*, *supra* note 288, ¶ 17; Comm. on Elim. Racial Discrim., *General Recommendation No. 34*, *supra* note 596, ¶¶ 9, 16; Comm. on Rts. People with Disabilities, *General Comment No. 5*, *supra* note 1127, ¶ 95; Comm. on Rts. People with Disabilities, *General Comment No. 6*, *supra* note 278, ¶ 71.

1350. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 15*, *supra* note 64, ¶ 53; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 16*, *supra* note 75, ¶ 39; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 21*, *supra* note 66, ¶ 71; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 22*, *supra* note 204, ¶ 49(b); Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 25*, *supra* note 39, ¶ 88; Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 26*, *supra* note 187, ¶ 59; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 28*, *supra* note 284, ¶ 28; Comm. on Elim. Discrim. Against Women, *General Recommendation No. 39*, *supra* note 39, ¶ 10; Comm. on Rts. Child, *General Comment No. 5*, *supra* note 918, ¶ 48; Comm. on Rts. Child, *General Comment No. 13*, *supra* note 74, ¶ 72(i)–(j); Comm. on Rts. Child, *General Comment No. 15*, *supra* note 209, ¶¶ 108–09, 117–18; Comm. on Rts. Child, *General Comment No. 26*, *supra* note 78, ¶¶ 74, 83; Comm. on Elim. Racial Discrim., *General Recommendation No. 36*, *supra* note 287, ¶¶ 41, 45, 52, 56, 69; Comm. on Rts. People with Disabilities, *General Comment No. 4*, *supra* note 1122, ¶ 95; Comm. on Rts. People with Disabilities, *General Comment No. 7*, *supra* note 1033, ¶¶ 34–41, 91, 94(f)–(i).

1351. Int'l L. Comm'n ARSIWA, *supra* note 660, art. 29.

1352. *Id.* art. 30(a). See also CRAWFORD, STATE RESPONSIBILITY, *supra* note 1316, at 68, ¶ 114 (2002).

1353. SHELTON, REMEDIES, *supra* note 1303, at 76.

1354. VCLT, *supra* note 38, pmbl. ¶ 2, art. 26.

1355. Hum. Rts. Comm., *General Comment No. 31*, *supra* note 653, ¶¶ 16–17.

provisional remedies or urgent measures through administrative processes and judicial or quasi-judicial bodies.¹³⁵⁶ Violations of future generations' rights also trigger an obligation to offer appropriate assurances and guarantees of non-repetition where circumstances so require,¹³⁵⁷ as specified in Principle 34 (b). These guarantees are preventive in nature and acknowledge the risk of recurrence.¹³⁵⁸

(5) In *Habitantes de La Oroya v. Peru*, the Inter-American Court of Human Rights emphasized the collective dimension of its remedies.¹³⁵⁹ The concurring opinion of Judges Pérez Manrique et al. specifically noted that the establishment of collective guarantees of non-repetition serves to “prevent risks for future generations.”¹³⁶⁰ They stressed that such collective non-repetition measures are crucial for the effectiveness of the “precautionary principle and the principle of intergenerational equity,” ensuring that the guarantees are “preventive and not merely palliative for the damage already caused.”¹³⁶¹

(6) The Human Rights Committee has clarified that the obligation “to take measures to prevent the recurrence of a violation” may require changes in the State Party’s laws or practices.¹³⁶² Similarly, the Committee on Economic, Social and Cultural Rights has held that guarantees of non-repetition may require legislative or administrative measures to ensure alignment of domestic law with the procedural principles and substantive obligations arising from the ICESCR.¹³⁶³ In cases involving violations of future generations’ rights resulting from, for example, the destruction of large areas of the natural environment, the obligation to offer guarantees of non-repetition might entail the adoption of legislation criminalizing such destruction.¹³⁶⁴

(7) The obligation to make full reparation for the injury caused by the wrongful act is a distinct obligation triggered by a human rights violation.¹³⁶⁵ Broadly speaking, the purpose of this obligation is “to eliminate the effects of the violations committed.”¹³⁶⁶ Three different forms of reparation can be distinguished, namely restitution in kind (*restitutio in integrum*), compensation,

1356. See, e.g., EVA RIETER, PREVENTING IRREPARABLE HARM: PROVISIONAL MEASURES IN INTERNATIONAL HUMAN RIGHTS ADJUDICATION (2010); Felipe González, *Urgent Measures in the Inter-American Human Rights System*, 7 SUR Int’l J. Hum. Rts. 51–73 (2010) (discussing how the Inter-American system of human rights has applied urgent measures, including for the protection of collective rights).

1357. Int’l L. Comm’n ARSIWA, *supra* note 660, art. 30(b) (this obligation is grouped with cessation as relating to the restoration of the rule of law, rather than as part of reparations); CRAWFORD, STATE RESPONSIBILITY, *supra* note 1316, at 195, ¶ 1.

1358. SHELTON, REMEDIES, *supra* note 1303, at 38. See, e.g.,); Afr. Comm’n H.P.R. v. Kenya, Reparations, App. No. 006/2012, Afr. Ct. H.P.R., ¶ 148 (2022).

1359. *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 344–55 (2023) (Court ordered guarantees of non-repetition, including updating air quality standards, ensuring specialized healthcare for affected individuals, providing public access to real-time data on pollution levels, training judicial and administrative officials on environmental matters, and ensuring that businesses comply with the human rights and environmental standard of due diligence).

1360. *Id.* ¶ 44 (concurring opinion by Pérez Manrique et al., J.J.).

1361. *Id.* ¶ 62.

1362. Hum. Rts. Comm., *General Comment No. 31*, *supra* note 653, ¶¶ 16–17.

1363. Communication No. 2/2014 (I.D.G. v. Spain), *adopted* June 1–25, 2015, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 55th Sess., ¶ 16, U.N. Doc. E/C.12/55/D/2/2014 (2015).

1364. See, e.g., POLLY HIGGINS, ERADICATING ECOCIDE 87–204 (2015) (ebook); LIDHO v. Côte d’Ivoire, App. No. 041/2016, Afr. Ct. H.P.R., ¶ 232 (2023); *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 328 (2023).

1365. Int’l L. Comm’n ARSIWA, *supra* note 660, art. 31(1).

1366. Gutiérrez-Soler v. Colom., Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 64 (Sept. 12, 2005).

and satisfaction, separately or in combination.¹³⁶⁷ These different forms of reparation are covered by Principles 33 to 36, with the accompanying Commentaries explaining how they apply to future generations.

33. *Full and Effective Reparation*

Victims are entitled to full and effective reparation, as laid out in principles 33–35 below, which include the following forms: restitution, compensation, and satisfaction. Reparation for violations of the human rights of future generations should be proportionate to the gravity of the violations and the harm caused by the violation. States, in consultation and cooperation with representatives of victims, must establish national and international programs for reparation for violations of the human rights of future generations.

Commentary

(1) Under Article 31 of the International Law Commission’s ARSIWA, a breach of an international obligation gives rise to an obligation on the part of the responsible State to make full reparation for the injury caused.¹³⁶⁸ This injury may be material or moral and must have been caused by the wrongful act of the responsible State. Reparations generally seek to place the victim in the position they would have been in if the harm had not occurred.¹³⁶⁹ These general norms are reflected in Principle 33 as applicable to future generations.

(2) Principle 33 also lists the forms of reparations envisaged under both general international law and international human rights law. It further clarifies that in all cases there is a correlation between the significance of the international obligation breached, the harm anticipated, and the reparations owed—a correlation that is “governed by the principle of proportionality.”¹³⁷⁰ The inclusion of the two elements of the gravity of the violations and harm caused as factors that determine the scope and nature of reparation mirrors principle 15 of the Principles on the Right to a Remedy and Reparation and provides for more flexibility than if either factor alone were the basis for proportionate reparations.¹³⁷¹

(3) Importantly, reparations may involve a response to harm that has not yet materialized. This is consistent with Principle 31 of Maastricht Principles on Future Generations, which implies that damage to goods to be enjoyed by future generations or to future generations themselves is not a necessary condition for a violation to arise. To give effect to future generations’ right to a remedy, the causation requirement inherent in Principle 33 must be read in conjunction with the precautionary principle highlighted in the Commentary to Principles 9 and 31. In connection with reparations, the precautionary principle prescribes that a lack of certainty about future harm does not absolve a State from the obligation to provide reparation for such harm.¹³⁷² Instead, it

1367. Int’l L. Comm’n ARSIWA, *supra* note 660, art. 34. See e.g., *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 321 (2023).

1368. *Id.* art. 31.

1369. BRIGITTE STERN, *LE PRÉJUDICE DANS LA THÉORIE DE LA RESPONSABILITÉ INTERNATIONALE* 10 (1973).

1370. Rüdiger Wolfrum, *Reparation for Internationally Wrongful Acts*, 10 Encyc. Disp. Installments 352–53 (1987).

1371. Principles on the Right to a Remedy and Reparation, *supra* note 1073, princ. 15. See also SHELTON, *REMEDIES*, *supra* note 1303, at 73.

1372. See e.g., *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 204, 207, 322–24 (2023) (Court held that causation was sufficiently shown by demonstrating that the exposure to pollution created a

calls for a probabilistic approach to causation whereby the likelihood of present or future harm being attributable to the wrongful act informs the content of the obligation to make reparations.¹³⁷³

(4) It must be noted here that “harm” may refer to past as well as future harm. On the one hand, both moral and material injury caused by violations of future generations’ rights may materialize long before future generations come into existence. If a State breaches its obligations to protect the rights of future generations from acts causing ecological breakdown, for example, this may be conceived as inflicting moral injury on future generations as well as causing material injury to ecosystems on which future generations will depend. In such cases, the invocation of States’ obligations to provide full and effective reparation for the injury caused may play a crucial role in actively countering conduct that may lead to more serious and large-scale violations of future generations’ rights. On the other hand, violations may involve projected future harm such as harm connected with irreversible long-term impacts of climate change. In such cases, the obligation to provide full and effective reparation may take the form of an ongoing obligation to mitigate the harm to the greatest possible extent, along with other appropriate redress.

34. Restitution

Restitution should be aimed at restoring the ability of victims to enjoy their human rights to the greatest possible extent. It should be informed by the best available scientific evidence, as well as Indigenous Peoples’ and traditional knowledge, by precaution, and the participation of victims’ representatives. Restitution includes, as appropriate: restoration of degraded ecosystems and means of subsistence and development, return of land, territories, resources, and other property, and means to identify, restore, revitalize and transmit cultural heritage.

Commentary

(1) Restitution is the primary remedy for violations of international law,¹³⁷⁴ and is required provided that it is “not materially impossible” and to the extent that it “does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.”¹³⁷⁵ In international human rights law, the proportionality test involves weighing the benefits and burdens of restitution, with due regard for the inalienable character of human rights, which generally favors restitution. The Inter-American Court of Human Rights clarified in *Velásquez-Rodríguez v. Honduras* that, in cases of human rights violations, restitution involves “the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm.”¹³⁷⁶

significant health risk, without the need to prove that the exposure caused or will cause a specific condition or disease. The Court held that this was in line with the precautionary principle to protect public health, even amid scientific uncertainty, and constituted a human rights violation of a collective scope, which informed the reparations measures ordered).

1373. Margaretha Wewerinke-Singh, *Remedies for Human Rights Violations Caused by Climate Change*, 9 *Climate L.* 224–43 (2019). See e.g., *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 204, 207, 322–24 (2023).

1374. CRAWFORD, STATE RESPONSIBILITY, *supra* note 1316, at 218, ¶ 3.

1375. Int’l L. Comm’n ARSIWA, *supra* note 660, art. 34.

1376. *Velásquez-Rodríguez v. Hond.*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 25–26 (1988).

The principle of *restitution in integrum* has been similarly endorsed in the jurisprudence of the European Court of Human Rights,¹³⁷⁷ and the African Commission and the African Court.¹³⁷⁸

(2) Principle 34 further specifies that restitution should be informed by the best available scientific evidence and the precautionary principle. In the context of restitution, the precautionary principle entails an understanding that a lack of scientific certainty about whether or not certain harm will materialize shall not be used as a reason for postponing restitution measures. Moreover, in deciding what form restitution should take, States must take account of the best available scientific evidence. This evidence must be used to anticipate future harm and design measures that are likely to restore the enjoyment of victims' human rights to the greatest possible extent. This approach to restitution is further illustrated in *Habitantes de La Oroya v. Peru*, where the Inter-American Court of Human Rights held that restitutionary measures "must take into account updated scientific information on the repair of damage to the environment caused by heavy metals," including the "short, medium and long-term actions required to remediate the contaminated areas" in the State's action plan.¹³⁷⁹ In addition, the Court ordered the State to "implement effective participation mechanisms that allow victims to become aware of the action plan, issue observations and have these considered before, during and after its implementation."¹³⁸⁰

35. *Compensation*

Appropriate compensation must be provided for any damage that cannot be prevented or repaired, including when restitution is not possible. Compensation may be made in kind, or in the form of monetary compensation committed to victims.

Commentary

(1) Where restitution is unavailable or inadequate, a State is under an obligation to provide compensation for the damage caused by its wrongful act.¹³⁸¹ Where compensation is provided, it should be commensurate with the loss so that the victim "may be made whole."¹³⁸² The Inter-American Court of Human Rights has stressed that the nature and amount of compensation "depend on the characteristics of the violation and on both the pecuniary and non-pecuniary damage caused."¹³⁸³ The Court further stressed that compensation must be paid "on equitable

1377. *E.g.*, *Jabardo v. Spain*, App. No. 10588/83, Eur. Ct. H.R., ¶ 16 (June 13, 2004).

1378. *See, e.g.*, Gino J. Naldi, *Reparations in the Practice of the African Commission on Human and Peoples' Rights*, 14 *Leiden J. Int'l L.* 682, 685 (2001); Tarisai Mutangi, *Tracing the Developing Reparations Jurisprudence of the African Court on Human and Peoples' Rights as Reflected in Its First Cases of Mtikila, Zongo, and Konate*, in *HUMAN RIGHTS ADJUDICATION IN AFRICA: CHALLENGES AND OPPORTUNITIES WITHIN THE AFRICAN UNION AND SUB-REGIONAL HUMAN RIGHTS SYSTEMS* 1, 5 (Alejandro Fuentes & Annika Rudman eds., 2024).

1379. *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 333–34 (2023).

1380. *Id.* ¶ 334.

1381. *See* Int'l L. Comm'n ARSIWA, *supra* note 660, art. 36 (stating that the obligation covers "any financially assessable damage including loss of profits insofar as it is established"). *See also* Alan Boyle, *Reparation for Environmental Damage in International Law: Some Preliminary Problems*, in *ENVIRONMENTAL DAMAGE IN INTERNATIONAL AND COMPARATIVE LAW* 16, 24 (Michael Bowman & Alan Boyle eds., 2002).

1382. CRAWFORD, *STATE RESPONSIBILITY*, *supra* note 1316, at 218, ¶ 3 (quoting another source).

1383. *Gutiérrez-Soler v. Colom.*, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 64 (2005).

grounds.”¹³⁸⁴ The Principles on the Right to a Remedy and Reparation further underscore that compensation must be “proportional to the gravity of the violation and the circumstances of each case.”¹³⁸⁵ Principle 35 of the Maastricht Principles on Future Generations makes it clear that these principles apply to both present and future losses and that victims who are future generations cannot be deprived of compensation merely by virtue of being future generations.

(2) Importantly, Principle 35 departs from the notion of compensation as a mere payment of a pecuniary lump sum toward a broader concept of compensation. In line with this broader concept, appropriate redress may take the form of compensation “in kind.” For instance, it may take the form of lands, territories, or other resources equal in quality, size, and legal status to those lost.¹³⁸⁶ It may also take the form of development projects, livestock or wild game being brought back to areas formerly inhabited by victims’ ancestors, support for farming or other activities that have been undermined by the violation, or educational programs and other forms of support. Alternatively, it may involve monetary compensation to be held in trust for victims.¹³⁸⁷ In all cases, awarding and allocating compensation should reflect the outcome of an open and transparent participatory process involving the representatives of victims.¹³⁸⁸

(3) Assessing the monetary value of loss and damage suffered by future generations entails epistemological and methodological challenges. This is especially the case for non-economic or non-pecuniary losses and damages, such as damage to ecosystems or the loss of cultural heritage and traditional knowledge. Like reparations in kind, monetary compensation for such loss and damage must be based on the principles of proportionality and “making the victim whole.”¹³⁸⁹ Redressing systematic violations of future generations’ rights will require engagement with the representatives of future generations to assess the gravity of the violations and help determine how victims may be compensated adequately for losses of “things . . . for which there are no commensurable substitutes.”¹³⁹⁰

(4) Principle 35 further provides that monetary compensation for future generations must be held in trust for the beneficiaries. This Principle is a forward-looking application of the general principle that in cases of human rights violations, the obligation to provide reparations lies with

1384. *Id.* ¶ 83. This is in line with established practice of human rights bodies (see Int’l L. Comm’n ARSIWA, *supra* note 660, at 102; *Al-Skeini v. U.K.*, App. No. 55721/07, Eur. Ct. H.R., ¶ 182 (July 7, 2011)).

1385. Principles on the Right to a Remedy and Reparation, *supra* note 1073, princ. 20.

1386. UNDRIP, *supra* note 141, art. 28(2); Comm. on the Elim. of Racial Discrim., *General Recommendation No. 23*, *supra* note 570, ¶ 5; *Sawhoyamaya Indigenous Community v. Para.*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 128 (2006); *Endorois v. Kenya*, Afr. Comm’n H.P.R., ¶ 209 (2009).

1387. See, e.g., *Oyal v. Turk.*, App. No. 4864/05, Eur. Ct. H.R., ¶ 5 (2010) (Court awarded compensation for pecuniary and non-pecuniary damage, as well as costs and expenses resulting from the State’s failure to prevent a violation of the applicant’s rights); *Afr. Comm’n H.P.R. v. Kenya, Reparations*, App. No. 006/2012, Afr. Ct. H.P.R., ¶¶ 151–56 (2022) (Court ordered the establishment of a development fund for the Ogiek community, which should serve as the repository for all funds awarded as compensation and reparations from the litigation, to be managed by an appropriate committee in consultation with the community).

1388. E.g., *Violence and Discrimination Against Women During the Armed Conflict in Colombia*, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II. doc. 67, rec. 63 (Oct. 18, 2006); *Afr. Comm’n H.P.R. v. Kenya, Reparations*, App. No. 006/2012, Afr. Ct. H.P.R., ¶¶ 155–56 (2022).

1389. See, e.g., Communication No. 10/2015 (*Calero v. Ecuador*), adopted March 26, 2018, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 63d Sess., ¶ 22, U.N. Doc. E/C.12/63/D/10/2015 (2018) (recommending that the victim be granted a pension or other social security benefits “enabling her to have an adequate and dignified standard of living”).

1390. Principles on the Right to a Remedy and Reparation, *supra* note 1073, princ. 20.

the State rather than with the victims and their relatives,¹³⁹¹ and more specifically, of State practice on the establishment of administrative programs enabling victims of systematic human rights violations to access economic reparations.¹³⁹² Compensating victims of such violations who are future generations will require the appointment of an administrator or trustee of the awarded compensation, so that the value of the compensation is maintained or applied for the purpose of restoring the rights that were violated.¹³⁹³

(5) While compensation can rarely restore the enjoyment of rights that were violated, it can “supply the means for whatever part of the former life and projects remain possible and may allow for new ones.”¹³⁹⁴ The tangible nature of compensation also provides victims with an important affirmation of their rights while ensuring that the costs of the violation are borne by the perpetrator of the violation rather than the victim. This is particularly important for future generations, whose rights and interests are too often discounted in favor of those of present generations. Finally, shifting the costs of the violation from the victim to the perpetrator could have a deterrence function and improve overall compliance with States’ obligations to respect, protect, and fulfill the rights of future generations.¹³⁹⁵

36. Satisfaction

Satisfaction must include, where applicable, any or all of the following:

- a) *Verification of the facts and full and public disclosure of the truth regarding the causes and conditions pertaining to the violations, including the role and responsibility of non-state actors;*
- b) *Mechanisms to provide victims and their representatives with information on the causes and conditions pertaining to the violations and to learn the truth in regard to these violations;*
- c) *An official declaration or a judicial decision restoring the dignity, status and rights of the victims;*
- d) *Public apology, including acknowledgement of the facts and acceptance of responsibility;*

1391. See, e.g., *Rochela Massacre v. Colom.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 163, ¶ 220 (May 11, 2007).

1392. SHELTON, REMEDIES, *supra* note 1303, at 412–22. See also *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.129, doc. 6, ¶ 99 (Oct. 2, 2007).

1393. See, e.g., *LIDHO v. Côte d’Ivoire*, App. No. 041/2016, Afr. Ct. H.P.R., ¶¶ 214, 234 (2023) (Court ordered the State to set up a compensation fund in consultation with the victims, to deposit the funds received from the company responsible for the human rights violations into the fund, and to further finance the scheme as needed for the full compensation of all the victims over time); *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 369–86 (2023) (Court awarded pecuniary and non-pecuniary damage, including the establishment of a fund to assist the community in accessing specialized healthcare. The Court further ordered that this fund be administrated by an appropriately appointed committee, which must include a designated person from the affected community (*id.* ¶ 349)).

1394. SHELTON, REMEDIES, *supra* note 1303, at 291.

1395. Hunjoon Kim & Kathryn Sikkink, *Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries*, 54 *Int’l Stud. Q.* 939–63 (2010) (on the deterrence effect of human rights prosecutions for transitional countries); Andrew Gage & Margaretha Wewerinke, *Taking Climate Justice Into Our Own Hands: A Model Climate Compensation Act*, West Coast Env’t L. & Vanuatu Env’t L. Ass’n (2015), <https://www.wcel.org/publication/taking-climate-justice-our-own-hands/> (on compensation for climate damages).

- e) *Judicial and administrative sanctions against persons liable for the violations;*
- f) *Inclusion of an accurate account of the violations that occurred in national and international human rights law training and in educational material at all levels.*

Commentary

(1) States responsible for an internationally wrongful act are under an obligation to give satisfaction insofar as the injury cannot be made good by restitution or compensation.¹³⁹⁶ Satisfaction may involve “an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.”¹³⁹⁷ Further, it may entail disclosure of the truth and punishment of wrongdoers to address the structural causes of human rights violations. The Inter-American Court of Human Rights, for example, has confirmed in various cases that the right to a remedy entails the right to access the truth about human rights violations, which in turn gives rise to due diligence obligations of States to ensure an effective investigation into the violations and to make all the facts known within a reasonable time.¹³⁹⁸ Given the epistemic obstacles that future generations will face in discovering the truth of the harm they suffer, these due diligence obligations further entail an obligation to ensure institutional memory of such violations.¹³⁹⁹ In cases of violations resulting from climate change and ecosystem degradation, disclosure of the truth could also involve scientific education campaigns to sensitize the public about the drivers of climate change and ecosystem degradation and their consequences for future generations.

(2) Satisfaction may also involve specific measures to restore the dignity of victims, such as “public actions or works the effect of which, among others, be to acknowledge the victim’s dignity and to avoid new violations of human rights.”¹⁴⁰⁰ In *Hernández v. Honduras*, for example, the Inter-American Court of Human Rights ordered the production of audio-visual material about the victims’ situation, with references to the facts of the case and with full involvement of the victim,¹⁴⁰¹ and the establishment of a scholarship in the victim’s name.¹⁴⁰² For future generations, these types of satisfaction could take a collective and intergenerational form, such as memorials co-produced with communities who suffer cultural losses, or the establishment of scholarships in the name of communities’ ancestors.

(3) As the European Court of Human Rights stressed in *Broniowski v. Poland*, international law requires that “individual and general redress . . . go hand in hand.”¹⁴⁰³ States, in consultation and cooperation with representatives of future generations, must establish national and international programs for reparation for violations of the rights of future generations. To that end, States must

1396. Int’l L. Comm’n ARSIWA, *supra* note 660, art. 37(1).

1397. *Id.* art. 37(2). See also *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 341 (2023).

1398. *E.g.*, *Pueblo Bello Massacre v. Colom.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶¶ 143–44, 170 (Jan. 31, 2006); *Habitantes de La Oroya v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 327–28, 340 (2023).

1399. See Commentary, Princs. 22(a), ¶ 5, 23. See also Alexandra Byrne et al., *Producing Truth: Public Memory Projects in Post-Violence Societies*, 46 Hum. Rts. Q. 207–33 (2024).

1400. *Gutiérrez-Soler v. Colom.*, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 82 (2005). See also *LIDHO v. Côte d’Ivoire*, App. No. 041/2016, Afr. Ct. H.P.R., ¶¶ 256–59 (2023).

1401. *Hernández v. Hond.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 287, ¶¶ 159–64 (June 28, 2021). See also *Cepeda Vargas v. Colom.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 213, ¶¶ 226–33 (May 26, 2010); *Massacres of El Mozote v. El Sal.*, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 370–78 (Oct. 25, 2012).

1402. *Hernández v. Hond.*, Inter-Am. Ct. H.R. (ser. C) No. 287, ¶¶ 159–64 (2021).

1403. *Broniowski v. Pol.*, Friendly Settlement, App. No. 31443/96, Eur. Ct. H.R., ¶ 36 (Sept. 28, 2005).

provide and mobilize adequate financial resources and technical assistance, in accordance with their CBDR-RC.