

Climate Change and the Dignity Rights of the Child

Brianna Mills & Madison McGuirk

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Professors Daly & May
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Introduction

The Universal Declaration of Human Rights recognizes that basic rights and fundamental freedoms are intrinsic to all human beings and that “all human beings are born free and equal in dignity and rights.”¹ This means that each person is endowed with dignity rights at birth, and these rights are inalienable and equally applicable to everyone, including children. This paper posits that the dignity rights of children should be considered in evaluating the consequences of climate change.

From a legal standpoint, not much has been produced in the context of environmental law linking environmental outcomes and dignity rights together. Environmental concerns normally develop at a domestic level through agency procedures and administrative law. By contrast, human rights and dignity rights develop at an international level and find their enforceability through international doctrines and resolutions.

As a legal construct, dignity is understood to include the right to full development of the personality and the autonomy. As such, a fully autonomous person has the freedom to develop physically, mentally, socially, and spiritually as he or she choose. Autonomy also includes the right to have control over one’s environment, and to participate in decisions affecting oneself.

This paper examines how dignity can be protected using international “soft” law as well

¹ Universal Declaration of Human Rights, 10 December 1948, Preamble.

as domestic and international constitutional law. Through analysis of the jurisprudence that pertains to the novel right to human dignity, this paper explores the profound legal standard that is set for humanity through the legal recognition of the right to human dignity. Additionally, this paper assesses how the legal claim to dignity has been able to expand the bounds of humanitarian law, and more specifically, the immense utility of dignity rights in the contexts of children and climate change.

I. International Law and the Recognition of Children’s Dignity Rights

International doctrine serves as a demonstrable means to generally protect environmental dignity rights as well those particular to children. First, as a general protection, the United Nations Declaration on Human Rights (UNDHR) asserts in its preamble that dignity rights are not only inherent but are “equal and inalienable of *all* members of the human family”.² The UNDHR goes on further to state that dignity rights are the “foundation of freedom, justice, and peace in the world.”³ In the context of children specifically the Convention on the Rights of the Child (CRC) asserts that children “should be fully prepared to live an individual life in society ... and brought up in the spirit of peace, *dignity*, tolerance, freedom, equality and solidarity.”⁴

States who are parties to the Convention on the Rights of the Child have recognized that children have equal and inalienable dignity rights. They have further acknowledged the right of children to enjoy the “highest attainable standard of health...”⁵ In furtherance of this specific right, state parties have vowed to take into consideration the dangers and risks of environmental

² *Id.*

³ *Id.*

⁴ Convention on the Rights of the Child, 2 September 1990, Preamble.

⁵ *Id.* at Article 24.

pollution as well as abolish practices prejudicial to the health of children.⁶

It is important to note that private citizens do not derive rights directly from treaty provisions or resolutions. But it is not to say that this type of “soft law” does not carry any weight legally. Treaties and resolutions adopted during various climate change conferences can be used as guidance to the courts when determining the responsibility of the government in contributing to dignity rights violations caused by climate change. Courts can utilize the acknowledgment of dignity in international decrees as a means to measure environmental rights and their violations. Additionally, international treaties and decrees can be used when determining if a duty of care is owed by the government, and if so, at what standard.

In *Urgenda Foundation v. The State of the Netherlands*, the court held that tort law provides a basis for holding the government accountable for the harms suffered by its citizens as a result of climate change.⁷ The court concluded that the Dutch government owed its citizens a duty of care to protect them from the consequences of climate change⁸. Under Dutch law, the government can be held accountable for failure to take adequate measures to prevent foreseeable harm. Accordingly, *Urgenda* argued that because the government had acknowledged that the measures currently being taken by the State to avoid the damaging effects of climate-changing gas emissions are inadequate, the government knowingly exposed citizens to environmental dangers.

The *Urgenda* case deliberately decided to bring a case based in private tort law against the national government. At the time suit was filed in the *Urgenda* case, there was a stronger legal basis to hold the Dutch government accountable due to its commitment to international

⁶ *Id.*

⁷ *Urgenda Foundation v. The State of the Netherlands*, (24 June 2015) C/09/456689/HA ZA 13-1396 (Netherlands).

⁸ *Urgenda Foundation* at 4.75.

climate change policies of which they were a signatory. At the 2009 UN Climate Change Conference, the Dutch government signed the United Nations Framework Convention on Climate Change (UNFCCC) decree. In this decree signatory countries committed to the same goal: “[T]o achieve the ultimate objective of the Convention to stabilize GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, we shall, recognizing the scientific view that the increase in global temperature should be below 2 degrees Celsius ... enhance our long-term cooperative action to combat climate change.”⁹ This commitment was renewed at the 2010 UN Climate Change Conference in Cancun, when the participatory countries acknowledged that they need to take a greater initiative to combat the harmful effects of climate change and further vowed to reduce GHG emissions by 25 to 40 percent by year 2020.¹⁰

During these conferences, signatories have also adopted the scientific findings of the UN’s Intergovernmental Panel on Climate Change (IPCC).¹¹ The *Urgenda Foundation* strategically decided that if it based its argument upon the findings in the IPCC, not only would the national government be unable to contest these findings, but it placed the judge in a position

⁹ United Nations Framework Convention on Climate Change (UNFCCC), Article 2

¹⁰ 2010 United Nations Climate Change Conference

¹¹ IPCC 1.4: “Changes in many extreme weather and climate events have been observed since about 1950. Some of these changes have been linked to human influences, including a decrease in cold temperature extremes, an increase in warm temperature extremes, an increase in extreme high sea levels and an increase in the number of heavy precipitation events in a number of regions.

IPCC 2: Continued emissions of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems. Limiting climate change would require substantial and sustained reductions in greenhouse gas emissions which, together with adaptation, can limit climate change risks.

IPCC 2.3: Climate change will amplify existing risks and create new risks for natural and human systems. Risks are unevenly distributed and are generally greater for disadvantaged people and communities in countries at all levels of development.

where he was all but forced to reach a verdict in their favor.

The Dutch court identified the duty of care owed to be a socially reasonable duty of care.¹² When deciding what was a socially reasonable duty of care was in this context, the court considered the Dutch Constitution, treaties to which the nation was a signatory, and other acknowledgments made by the nation in regard to climate change. The court determined that international law *must* be considered when determining what the state's duty of care is in relation to climate change issues. Further, the court concluded that the Netherlands is obligated to amend its national law when necessary in light of international objectives.¹³ “[T]hat means that when applying and interpreting national-law open standards and concepts, including social propriety, reasonableness and propriety, the general interest or certain legal principles, the court takes account of such international-law obligations. This way, these obligations have a ‘reflex effect’ in national law.”¹⁴

Finally, the court argued: “The principle of fairness means that policy should not only start from what is most beneficial to the current generation at this moment, but also what this means for future generations, so that future generations are not exclusively and disproportionately burdened with the consequences of climate change.”¹⁵

The ruling in *Urgenda* is the first of its kind. Over the years the courts have refrained from insisting the government and fossil fuel companies do their share to help mitigate the harmful affects of climate change. As a result, the risk of large-scale human rights and dignity rights violations continue to rise. Sadly, those that will be impacted the most by these effects are

¹² *Urgenda Foundation*, at 4.44.

¹³ *Id.*

¹⁴ *Id.* at 4.443

¹⁵ *Id.* at 4.57

the world's most vulnerable members, our current children and our future generations.

Countries around the globe have acknowledged the harmful effects of climate change. They have acknowledged that the right to life, health, and education are at stake. Food and water deprivation will continue to rise and a mass number of children will become victims to environmental displacement.

Urgenda sets an example for the world by using international and intergovernmental law for establishing the response to human dignity and human rights violations caused by climate change. While the decision in *Urgenda* is not binding on any other country, it will hopefully be the first of many to incorporate this area of "soft law" when addressing climate change issues. Judges should be using international law and human rights law tools to require their states to improve their current climate change policies in order to protect against the harmful effects of climate change.

II. Dignity Rights, Constitutionalism, and Youth Plaintiffs

Over the years a jurisprudence of dignity rooted in constitutionalism has developed around the world. The right to fully develop personality, the right to be included in decisions affecting oneself, and the right to participate in one's social environment are foundation of dignity from which other constitutional rights are formed. It is our position that these aspects of dignity are particularly sensitive to the development of the child and are also the most threatened by environmental outcomes --- such as climate change. We believe that taking into account human dignity rights, particularly those of children, could make a significant contribution to proposed solutions to environmental outcomes.

Like the *Urgenda* case, in the case of *Our Children's Trust*, twenty-one children ("youth

plaintiffs”) also decided to hold their government responsible for failing to adequately protect them, as well as future generations, from the harmful impacts of climate change. In this case the plaintiffs allege violations of their substantive due process rights to life, liberty, and property. Particularly, plaintiffs allege substantial harm to future generations. Under the Fifth Amendment to the United States Constitution, the federal government cannot deprive a person of “life, liberty, or property” without “due process of law.”¹⁶ Traditionally, the courts use rational basis review as a default level of scrutiny. However, the youth plaintiffs in this case allege that strict scrutiny review is needed. Strict scrutiny review is required whenever the government infringes on a fundamental right *or* if the government is discriminating against a suspect class – regardless of whether the government action violates on a fundamental right.

In the case of *Our Children’s Trust*, the youth plaintiffs allege that the government, by “actively enabling” the development of fossil fuels which leads to climate destabilization, have violated their fundamental, constitutional rights to life, liberty, and property as well as violated the public trust doctrine.

The experiences of children during childhood profoundly affect their physical, cognitive, emotional, and social development. When children are affected by the impacts of climate change, they are at risk for severe environmental threats, epidemiological diseases, displacement, and social disruption. Here, plaintiffs specifically allege harm to: “Plaintiffs’ **dignity**, including their capacity to provide for their basic human needs, safely raise families, practice their religious and spiritual beliefs, maintain their bodily integrity, and lead lives with access to clean air, water, shelter, and food.”¹⁷ Additionally, the Youth Plaintiffs claim the government has also violated

¹⁶ United States Constitution, Amendment 5.

¹⁷ *Juliana v. United States*, No. 6:15-cv-01517-TC, 2016 U.S. Dist. LEXIS 156014, at *54 (D.

the public trust doctrine, which holds sovereign governments as the trustees and protectors of shared resources, such as land and water. The government, as trustee, has a fiduciary duty to protect the trust assets so that current and future beneficiaries are not deprived of the natural resources necessary for survival and well-being. The plaintiffs further allege, that the government action – and inaction – discriminates against a suspect class, children and future generations. A suspect class exists when the civil rights of one particular group are curtailed¹⁸. It is the position of the Youth Plaintiffs that the effects of climate change will unduly burden the children of current and future generations with an unstable environment, and as such they should be treated as a suspect class deserving of strict scrutiny review.

The plaintiffs in *Our Children's Trust* ask the court to recognize a fundamental right where one did not exist before. And while the outcome of *Our Children's Trust* cannot be predicted, there is hope that a fundamental right to a stable climate environment will be recognized in the near future. In her opinion, Federal Judge Aiken alluded to the possibility of a new fundamental right being established, the right to a climate system capable of sustaining human life.¹⁹ Judge Aiken went on to compare the right to a stable climate environment to the right to marriage. “Just as marriage is the foundation of the family, a stable climate system is quite literally the foundation of society, without which there would neither be civilization nor progress.”²⁰ Similarly, just because dignity, as a fundamental right does not exist, does not mean it will not exist in the future. Like to the right to marry, dignity should be looked at as an unenumerated right that underlies and supports other vital liberties such as the right to life, to an

Or. Nov. 10, 2016)

¹⁸ *Korematsu v. United States*, 323 U.S. 214, 65 S. Ct. 193, 89 L. Ed. 194 (1994).

¹⁹ *Juliana v. United States*, No. 6:15-cv-01517-TC, 2016 U.S. Dist. LEXIS 156014, at *50 (D. Or. Nov. 10, 2016)

²⁰ *Id.*

education, to practice religion freely, and many more.

III. Government Accountability for Dignity Rights

Although our in terms of domestic law, dignity rights stand idly at their constitutional threshold, in contrast our international counterparts have readily defined and interpreted dignity rights and explored how to account for the intricacy of these inherent human rights. For example, Pakistan has recognized that the complexity of the right to dignity requires substantial government attention. In the case of *Ashgar Leghari v. Federation of Pakistan* (2015), the Lahore High Court Green Bench accounts for the complexity of the right to human dignity, and recognizes that the effects of climate change on that right warrant immense government collaborations. In *Leghari*, a farmer filed a public interest litigation alleging the government of Pakistan's inaction and delay in implementing the National Climate Change Policy and addressing vulnerabilities associated with climate change violates the fundamental constitutional rights to life and **dignity**. The Lahore High Court Green Bench found that "on a legal and constitutional plane this is clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court."²¹ Accordingly, the first order issued by the Lahore High Court Green Bench on September 4, 2015 required:

Federal Government.

- i. Cabinet Division, Government of Pakistan.
- ii. Ministry of Finance, Revenue and Planning and Development.
- iii. Ministry of Foreign Affairs
- iv. Ministry of Inter-Provincial Coordination.

²¹ 6 W.P. No.25501/2015

- v. Ministry of Law and Justice
- vi. Ministry of Climate Change.
- vii. Ministry of National Food Security and Research.
- viii. Ministry of Water and Power
- ix. Irrigation Department.
- x. National Disaster Management Authority (NDMA).

Provincial Government.

- i. Agricultural Department.
- ii. Environment Protection Department/EPA.
- iii. Food Department.
- iv. Forestry, Wildlife and Fisheries Department.
- v. Health Department.
- vi. Housing, Urban Development and Public Health Engineering
Department.
- vii. Planning and Development Department.
- viii. Irrigation Department.
- ix. Law and Parliamentary Affairs Department.
- x. Disaster Management Department (DMD).
- xi. PDMA.²²

“(i) That above Ministries, Departments and Authorities shall nominate
CLIMATE CHANGE FOCAL PERSON within their institution to closely
work with the *Ministry of Climate Change* to ensure the implementation of

²² *Ashgar Leghari v. Federation of Pakistan* (W.P. No. 25501/2015) Lahore High Court Green Bench

the Framework and also assist the Court in the instant petition. The official notification for the said nomination shall be placed on record on the next date of hearing when the FOCAL PERSON shall also appear before the Court.

(ii) The above Ministries, Departments and Authorities shall present a list of adaptation action points (out of the priority items of the Framework) that can be achieved by 31st December, 2015.

(iii) In order to assist this Court to monitor the progress of the Framework according to the deadline directed by the Court (i.e., 31st December, 2105) it is imperative to constitute a CLIMATE CHANGE COMMISSION (CCC).

CCC shall comprise: (a) representatives of the key ministries/departments (b)NGOs (c) Technical Experts etc.”²³

In ordering such, The Green Bench invoked the right to life and the *right to dignity* protected by the Constitution of Pakistan and international principles, including intergenerational equity and the precautionary principle, to call for a “move to Climate Change Justice.”²⁴ To preserve these delicate and vulnerable fundamental rights, The Green Bench powerfully explained which constitutional principles have vested in the judiciary the authority to address and monitor the government’s response to climate change. Emphatically, The Green Bench declared:

“(7) Fundamental rights, like the right to life (article 9) which includes the right to a healthy and clean environment and right to **human dignity** (article 14) with *constitutional principles of democracy, equality, social, economic and political*

²³ 7 W.P. No.25501/2015

²⁴ 7 W.P. No.25501/2015

justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, **inter and intra-generational equity and public trust doctrine**. Environment and its protection has taken a center stage in the scheme of our constitutional rights. It appears that we have to move on. The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change. From Environmental Justice, which was largely localized and limited to our own ecosystems and biodiversity, we need to move to Climate Change Justice. Fundamental rights lay at the foundation of these two overlapping justice systems. Right to life, **right to human dignity**, right to property and right to information under articles 9, 14, 23 and 19A of the Constitution read with the constitutional values of political, economic and social justice provide the necessary judicial toolkit to address and monitor the Government's response to climate change."²⁵

Human Dignity though fluid in definition, is rigid in terms of how it may be adequately preserved. *Ashgar Leghari v. Federation of Pakistan* (2015), demonstrates that accounting for potential violations against human dignity requires substantial and consistent communication among the various government entities. Pakistan powerfully recognizes the humanitarian deprivations caused by climate change are especially vulnerable and adequate surveillance of these rights can only be accomplished through the presence of a Climate Change Commission. Profoundly, The Green Bench set the precedent that when something in the environment is

²⁵ read 6 W.P. No.25501/2015

causing humanitarian violations- there need be specific specialized government attention to eradicate/survey the cause of the harm, so as to minimize the potential harmful effects. Through analysis of the various acknowledgements of the right to human dignity, it becomes clear that the only way to protect the complex yet fundamental right- is through continued government action.